MONTANA LEGISLATIVE HISTORY

Chapter 18 1995

Bill H _____ S 1 Original bill & history X C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	1/20	✓ C	Hearing Date(s)	1/5	✓ C
		C		1/9	✓ C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

SENATE BILLS
AND RESOLUTIONS

SB 1 INTRODUCED BY GAGE, ET AL.

GENERALLY REVISE AND CLARIFY THE MONTANA CODE ANNOTATED

BY REQUEST OF THE CODE COMMISSIONER

12/16	INTRODUCED		
1/02	FIRST READING		
1/02	REFERRED TO JUDICIARY		
1/05	HEARING		
1/09	COMMITTEE REPORT—BILL PASSED		
1/10	2ND READING PASSED	48	0
1/11	3RD READING PASSED	48	0
	TRANSMITTED TO HOUSE		
1/12	FIRST READING		
1/12	REFERRED TO JUDICIARY		
1/20	HEARING		
1/23	COMMITTEE REPORT—BILL CONCURRED		
1/24	2ND READING CONCURRED	98	1
1/25	3RD READING CONCURRED	97	2
	RETURNED TO SENATE		
1/27	SIGNED BY PRESIDENT		
1/27	SIGNED BY SPEAKER		
1/31	TRANSMITTED TO GOVERNOR		
2/02	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 18		
	EFFECTIVE DATE: 02/02/95—SECTIONS 73 & 75		
	EFFECTIVE DATE: 07/01/95—SECTION 12		
	EFFECTIVE DATE: 10/01/95—SECTIONS 1-11, 13-72 & 74		

SB 2 INTRODUCED BY CRIPPEN

REVISE FINANCING OF SPECIAL IMPROVEMENT DISTRICTS AND RURAL SPECIAL IMPROVEMENT DISTRICTS

BY REQUEST OF REVENUE OVERSIGHT COMMITTEE

12/15	INTRODUCED		
1/02	FIRST READING		
1/02	REFERRED TO LOCAL GOVERNMENT		
1/03	FISCAL NOTE PRINTED		
1/10	HEARING		
1/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/19	2ND READING PASSED	50	0
1/20	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
1/23	FIRST READING		
1/23	REFERRED TO LOCAL GOVERNMENT		
2/28	HEARING		
3/08	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED	95	0
3/14	3RD READING CONCURRED	97	1
	RETURNED TO SENATE		
3/17	SIGNED BY PRESIDENT		
3/18	SIGNED BY SPEAKER		
3/20	TRANSMITTED TO GOVERNOR		
3/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 229		
	EFFECTIVE DATE: 03/24/95		

SENATE BILL NO. 1

INTRODUCED BY GAGE, MENAHAN

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CLARIFY ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 54TH LEGISLATURE; AMENDING SECTIONS 1-2-201, 1-11-302, 2-2-102, 3-5-403, 3-10-601, 7-8-2218, 7-14-102, 7-14-301, 13-37-226, 15-1-501, 15-31-702, 15-35-108, 15-36-112, 15-37-117, 15-51-103, 15-53-114, 15-59-108, 15-59-208, 15-60-210, 15-65-121, 15-70-101, 15-71-104, 16-1-306, 16-1-401, 16-1-404, 16-1-408, 16-1-410, 16-1-411, 16-11-119, 16-11-206, 17-1-503, 17-6-201, 17-7-502, 20-7-436, 20-9-104, 20-9-115, 20-9-314, 20-9-370, 20-9-466, 23-5-610, 26-1-602, 32-3-704, 32-3-801, 37-17-102, 39-51-304, 39-71-532, 39-71-2504, 40-4-215, 41-5-311, 45-2-101, 45-5-206, 46-11-111, 46-18-248, 46-18-250, 46-18-304, 52-2-101, 52-2-505, 52-3-813, 53-1-301, 53-9-109, 53-24-302, 53-30-101, 61-2-107, 61-10-214, 70-24-103, 72-2-113, 72-2-116, 72-33-108, 75-10-513, 75-10-919, 85-1-102, AND 87-1-605, MCA; REPEALING SECTIONS 1-5-205, 2-17-127, 15-25-101, 15-25-102, 15-25-111, 15-25-112, 15-25-113, 15-25-114, 15-25-115, 15-25-121, 15-25-122, 15-25-123, 19-15-101, 19-15-102, 50-49-108, AND 77-1-222, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 1-2-201, MCA, is amended to read:

"**1-2-201. Statutes -- effective date.** (1) (a) Except as provided in subsection (1)(b) or (1)(c), every statute adopted after January 1, 1981, takes effect on the first day of October following its passage and approval unless a different time is prescribed ~~therein~~ in the enacting legislation.

(b) Every statute providing for appropriation by the legislature for public funds for a public purpose takes effect on the first day of July following its passage and approval unless a different time is prescribed ~~therein~~ in the enacting legislation.

(c) Every statute providing for the taxation of or the imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed

~~therein~~ in the enacting legislation.

(2) "Passage", as used in subsection (1), means the enactment into law of a bill, which has passed the legislature, either with or without the approval of the governor, as provided in the constitution."

Section 2. Section 1-11-302, MCA, is amended to read:

"**1-11-302. Updates of Montana Code Annotated.** ~~(1)~~ The publication of updates to the Montana Code Annotated may be as a cumulative supplement or replacement volume or in any other format approved by the legislative council.

~~(2) The supplements or replacements shall be certified, published, copyrighted, and deposited with the secretary of state. The supplements and replacements become effective on the date deposited with and certified to the secretary of state.~~"

Section 3. Section 2-2-102, MCA, is amended to read:

"**2-2-102. Definitions.** As used in this part, the following definitions apply:

(1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by ~~himself~~ the person or another.

(3) "Employee" means any temporary or permanent employee of the state or any subdivision ~~thereof~~ of the state or a member of the judiciary, including a member of a board, commission, or committee, except a legislator and an employee under contract to the state.

(4) "Financial interest" means an interest held by an individual~~, his~~ or the individual's spouse~~,~~ or minor children ~~which~~ that is:

(a) an ownership interest in a business;

(b) a creditor interest in an insolvent business;

(c) an employment or prospective employment for which negotiations have begun;

(d) an ownership interest in real or personal property;

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

(5) "Official act" or "official action" means a vote, decision, recommendation, approval,

disapproval, or other action, including inaction, ~~which~~ that involves the use of discretionary authority.

(6) "Public officer" includes any state officer except a legislator or member of the judiciary. ~~or any~~ The term includes an elected officer of any subdivision of the state.

(7) "State agency" includes the state; the legislature and its committees; all executive departments, boards, commissions, committees, bureaus, and offices; the university system; and all independent commissions and other establishments of the state government except the courts.

(8) "State officer" includes all elected officers and directors of the executive branch of state government as defined in 2-15-102."

Section 4. Section 3-5-403, MCA, is amended to read:

"**3-5-403. Terms and departments in multijudge districts.** (1) In each judicial district ~~which~~ that has ~~now or may hereafter have~~ more than one judge, as many terms or sessions of court may be held at the same time as there are judges in the district~~, either elected or appointed to, called into, or assigned to the performance of the duties of holding court therein~~.

(2) The judges elected or appointed to hold office in each judicial district having more than one judge ~~must~~ shall divide the court into departments, prescribe the order of business, and make rules for the government of ~~such~~ the court. Each department ~~shall~~ must be numbered, and each judge ~~shall~~ must be assigned to one of ~~such~~ the numbered departments.

(3) The judges ~~must~~ shall apportion the business of the court among themselves as equally as ~~may be~~ possible. In case of their failure for any cause to make ~~such~~ the apportionment or to assign each judge to a numbered department, the supreme court, upon application of any interested person, shall make an order apportioning ~~such~~ the business and assigning each judge to a numbered department and cause the ~~same~~ order to be entered upon the minute book of the district court in each county in ~~such~~ the district. ~~Such~~ The order ~~shall remain~~ remains in full force and effect until modified or repealed by the authority making it. The failure or refusal of any district judge to carry out the terms of ~~such~~ the order ~~shall constitute~~ constitutes a contempt of the supreme court.

~~(4) The principal office of the judgeship in the 4th district created by Chapter 542, L. 1979, shall be in Lake County. The chief judge of the district shall have authority to assign a judge to such office.~~"

Section 5. Section 3-10-601, MCA, is amended to read:

"**3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees.** (1) Each justice of the peace shall collect the fees prescribed by law for justices' courts and shall pay them into the county treasury of the county in which the justice of the peace holds office, on or before the 10th day of each month, to be credited to the general fund of the county.

(2) All fines, penalties, and forfeitures that ~~this code requires~~ are required to be imposed, collected, or paid in a justice's court must, for each calendar month, be paid by the justice's court on or before the 5th day of the following month to the treasurer of the county in which the justice's court is situated, except that they may be distributed as provided in 44-12-206 if imposed, collected, or paid for a violation of Title 45, chapter 9 or 10.

(3) The county treasurer shall, in the manner provided in 15-1-504, distribute money received under subsection (2) as follows:

(a) 50% to the state treasurer; and

(b) 50% to the county general fund.

(4) The state treasurer shall distribute money received under subsection (3) as follows:

(a) 44.81% to the state general fund;

(b) 9.09% to the fish and game account in the state special revenue fund;

(c) 11.76% to the state highway account in the state special revenue fund;

(d) 16.93% to the traffic education account in the state special revenue fund;

(e) 0.57% to the department of livestock account in the state special revenue fund;

(f) 15.9% to the crime victims compensation and assistance account in the state special revenue fund; and

(g) 0.94% to the department of family services special revenue account for the battered spouses and domestic violence grant program."

Section 6. Section 7-8-2218, MCA, is amended to read:

"**7-8-2218. Procedure if property not sold at public auction.** ~~If~~ After notice and appraisal are given as provided in 7-8-2212 and 7-8-2214, if no bid or offer is made for any property offered for sale at public auction, ~~after notice and appraisal given as provided in 7-8-2212 and 7-8-2214,~~ the board of county commissioners may, at any time ~~thereafter~~ after the auction, sell ~~such~~ the property at private sale and may ~~on such~~ at the private sale accept as the purchase price ~~therefor~~ an amount not less than 70% of the

appraised value ~~thereof~~ of the property."

Section 7. Section 7-14-102, MCA, is amended to read:

"**7-14-102. Allocation of state funds for public transportation.** (1) (a) The department of transportation shall allocate each year one-half of the funds appropriated for the purposes of this section among the cities and urban transportation districts of the state that operate or contract for the operation of general public transportation systems.

(b) (i) A city or urban transportation district is eligible for an allocation based upon the ratio of its local financial support for public transportation to the total local financial support for all general public transportation systems in the state. Local financial support must be determined by dividing the city's or district's expenditure of local revenue for public transportation operations during the fiscal year by the mill value of the city or urban transportation district. Each applicant city and urban transportation district shall compute its expenditure of local revenue for public transportation operations for a fiscal year immediately following the end of the fiscal year and shall apply allocations received against that deficit.

(ii) A city or urban transportation district may not receive more than 50% of any year's expenditure of local revenue for public transportation operations as an allocation under this section.

(2) One-half of the funds appropriated for the purposes of this section must be paid by the department of transportation to the counties of the state in the manner provided in 15-70-101~~(1)(b)~~(2)(b). Money distributed to counties under this section must be used by the counties for highway or other transportation purposes.

(3) The department of transportation may adopt rules for the keeping of accounts for and otherwise implementing this section."

Section 8. Section 7-14-301, MCA, is amended to read:

"**7-14-301. Local option motor fuel excise tax authorized.** (1) A motor fuel excise tax~~, in increments of 1 cent per gallon, not to exceed 2 cents per gallon upon gasoline sold to the ultimate consumer within the county for use in motor vehicles operated upon public highways, streets, and roads~~ may be imposed within a county:

(a) by the people of the county by initiative; or

(b) by the board of county commissioners by adoption of a resolution and referral to the people.

(2) The motor fuel excise tax must be imposed in increments of 1 cent per gallon and may not exceed 2 cents per gallon. The tax must be imposed upon gasoline sold to the ultimate consumer within the county for use in motor vehicles operated upon public highways, streets, and roads.

~~(2)~~(3) The initiative or referendum must specify that the tax is to be collected by the department of transportation.

~~(3)~~(4) ~~Such a~~ The motor fuel excise tax may not be assessed sooner than 90 days from the date of passage of ~~such an~~ the initiative or referendum.

~~(4)~~(5) ~~Every distributor shall pay the motor fuel excise tax to the agency specified in the initiative or referendum as provided in subsection (1). When the tax is collected by the department of transportation, each~~ Each distributor shall render a monthly statement to the department of transportation of all gasoline distributed during the preceding calendar month in the county in which it is sold to the ultimate consumer and ~~such~~ other information ~~as~~ that the department ~~may reasonably require~~ requires in order to administer the motor fuel excise tax.

~~(5)~~(6) The information, recordkeeping, and examination of records provisions of Title 15, chapter 70, apply to this part.

~~(6)~~(7) The department of transportation ~~collecting the tax authorized under subsection (1)~~ shall establish procedures to provide a refund to a person who has paid the ~~excise~~ tax but who can substantiate that the motor fuel was purchased for a use other than on public highways, streets, and roads.

~~(7)~~(8) In this part, the terms "distributor", "gasoline", ~~"import",~~ "motor vehicle", "person", and "use" have the meanings ascribed to them in 15-70-201."

Section 9. Section 13-37-226, MCA, is amended to read:

"13-37-226. Time for filing reports. (1) Candidates for a state office filled by a statewide vote of all the electors of Montana and political committees that are organized to support or oppose a particular statewide candidate shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot;

(b) on the 10th day of March and September in each year that an election is to be held and on the 15th and 5th days preceding the date on which an election is held and within 24 hours after receiving a

contribution of $500 or more if received between the 10th day before the election and the day of the election;

(c) not more than 20 days after the date of the election; and

(d) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

(2) Political committees organized to support or oppose a particular statewide ballot issue shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that an issue subject to a referendum is or is expected to be on the ballot;

(b) on the 10th day of March and on the 10th day of each subsequent month through September;

(c) on the 15th and 5th days preceding the date on which an election is held;

(d) within 24 hours after receiving a contribution of $500 or more if received between the 10th day before the election and the day of the election;

(e) within 20 days after the election; and

(f) on the 10th day of March and September of each year following an election until the political committee files a closing report as specified in 13-37-228(3).

(3) Candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or a district court judge, and political committees that are specifically organized to support or oppose a particular state district candidate or issue shall file reports:

(a) on the 12th day preceding the date on which an election is held and within 24 hours after receiving a contribution of $100 or more if received between the 17th day before the election and the day of the election;

(b) not more than 20 days after the date of the election; and

(c) whenever a candidate or political committee files a closing report as specified in 13-37-228(3).

(4) Candidates for any other public office and political committees that are specifically organized to support or oppose a particular local issue shall file the reports specified in subsection (3) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds $500, except as provided in 13-37-206.

(5) For the purposes of this subsection, a committee that is not specifically organized to support

or oppose a particular candidate or ballot issue and that receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file reports:

(a) on the 12th day preceding the date of an election in which it participates by making an expenditure;

(b) not more than 20 days after the date of the election in which it participates by making an expenditure; and

(c) ~~a closing report at the close of each calendar year,~~ on a date to be prescribed by the commissioner for a closing report at the close of each calendar year.

(6) The commissioner may promulgate rules regarding the extent to which organizations that are not primary political committees but are incidental political committees shall report their politically related activities in accordance with this chapter.

(7) All reports required by this section must be complete as of the fifth day before the date of filing as specified in ~~13-37-225(2)~~ 13-37-228(2) and this section."

Section 10. Section 15-1-501, MCA, is amended to read:

"**15-1-501. Disposition of money from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection ~~(6)~~(5) all money received from the collection of:

(a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(b) electrical energy producer's license taxes under chapter 51;

(c) severance taxes allocated to the general fund under chapter 36;

(d) liquor license taxes under Title 16;

(e) telephone company license taxes under chapter 53; and

(f) inheritance and estate taxes under Title 72, chapter 16.

(2) All money received from the collection of income taxes under chapter 30 of this title must, in accordance with the provisions of subsection ~~(6)~~(5), be deposited as follows:

(a) 91.3% of the taxes to the credit of the state general fund;

(b) 8.7% of the taxes to the credit of the debt service account for long-range building program

bonds as described in 17-5-408; and

(c) all interest and penalties to the credit of the state general fund.

(3) All money received from the collection of corporation license and income taxes under chapter 31 of this title, except as provided in 15-31-702, must, in accordance with the provisions of subsection ~~(6)~~(5), be deposited as follows:

(a) 89.5% of the taxes to the credit of the state general fund;

(b) 10.5% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408; and

(c) all interest and penalties to the credit of the state general fund.

(4) The department of revenue shall also deposit to the credit of the state general fund all money received from the collection of license taxes~~,~~ and fees~~,~~ and all net ~~revenues~~ revenue and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

~~(5) After the distribution provided for in 15-36-112, the remainder of the oil severance tax collections must be deposited in the general fund.~~

~~(6)~~(5) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (5), in accordance with generally accepted accounting principles.

~~(7)~~(6) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded."

Section 11. Section 15-31-702, MCA, is amended to read:

"15-31-702. Distribution of corporation license taxes collected from banks or savings and loan associations. (1) All corporation license taxes, interest, and penalties collected from banks and savings and loan associations must, in accordance with the provisions of 15-1-501~~(6)~~, be distributed in the following manner:

(a) 20% must be allocated as provided in 15-1-501(3); and

(b) 80% is statutorily appropriated, as provided in 17-7-502, for allocation to the various taxing

jurisdictions within the county in which the bank or savings and loan association is located.

(2) The corporation license taxes, interest, and penalties distributed under subsection (1)(b) must be allocated to each taxing jurisdiction in the proportion that its mill levy for that fiscal year bears to the total mill levy of the taxing authorities of the district in which the bank or savings and loan association is located.

(3) "Taxing jurisdictions" means, for the purposes of this section, all taxing authorities within a county permitted under state law to levy mills against the taxable value of property in the taxing district in which the bank or savings and loan association is located.

(4) If a return filed by a bank or savings and loan association involves branches or offices in more than one taxing jurisdiction, the department of revenue shall provide a method by rule for equitable distribution among those taxing jurisdictions."

Section 12. Section 15-35-108, MCA, is amended to read:

"**15-35-108. (Temporary) Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501~~(6)~~, be allocated as follows:

(1) ~~To~~ Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution~~, 50% of total coal severance tax collections~~. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Starting July 1, 1987, and ending June 30, 2003, 12% of coal severance tax collections ~~are~~ is allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) 17½% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1¼% to the credit of the renewable resource development bond fund;

(e) 0% to a nonexpendable trust fund for the purpose of parks acquisition or management. Income

from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1¼% to the debt service fund type to the credit of the renewable resource loan debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) 1 2/3% to a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Income from this trust fund ~~shall~~ must be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.

(k) beginning July 1, 1993, and ending June 30, 1995, 3 1/3% to a special revenue account to be used by the department of fish, wildlife, and parks for the stabilization and preservation of historic and cultural sites within the state park system;

(l) all other ~~revenues~~ revenue from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state. (Terminates June 30, 1995--sec. 4, Ch. 536, L. 1993.)

15-35-108. (Effective July 1, 1995) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501~~(6)~~, be allocated as follows:

(1) ~~To~~ Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution~~, 50% of total coal severance tax collections~~. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Starting July 1, 1987, and ending June 30, 2003, 12% of coal severance tax collections ~~are~~ is allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) 17½% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1¼% to the credit of the renewable resource ~~development bond~~ loan debt service fund;

(e) 3 1/3% to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1¼% to the debt service fund type to the credit of the renewable resource loan debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) 1 2/3% to a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Income from this trust fund ~~shall~~ must be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.

(k) all other ~~revenues~~ revenue from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state. (Terminates July 1, 2003--sec. 4, Ch. 191, L. 1991.)

15-35-108. (Effective July 1, 2003) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501~~(6)~~, be allocated as follows:

(1) ~~To~~ Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution~~, 50% of total coal severance tax collections~~. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) 17½% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1¼% to the credit of the renewable resource ~~development bond~~ loan debt service fund;

(e) 3 1/3% to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1¼% to the debt service fund type to the credit of the renewable resource loan debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) 1 2/3% to a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Income from this trust fund ~~shall~~ must be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.

(k) all other ~~revenues~~ revenue from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state."

Section 13. Section 15-36-112, MCA, is amended to read:

"**15-36-112. Disposition of oil and gas state and local government severance taxes -- calculation of unit value for local government severance tax.** (1) Each year, the department of revenue shall determine the amount of tax collected under this chapter from within each taxing unit.

(2) For purposes of the distribution of local government severance taxes collected under this chapter, the department shall determine the unit value of oil and gas for each taxing unit as follows:

(a) The unit value for petroleum and other mineral or crude oil for each taxing unit is the quotient obtained by dividing the net proceeds taxes calculated on petroleum or mineral or crude oil produced in that taxing unit in calendar year 1988 by the number of barrels of petroleum or other mineral or crude oil produced in that taxing unit during 1988, excluding new and interim production.

(b) The unit value for natural gas is the quotient obtained by dividing the net proceeds taxes calculated on natural gas produced in that taxing unit in calendar year 1988 by the number of cubic feet

of natural gas produced in that taxing unit during 1988, excluding new and interim production.

(3) The state and local government severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501~~(6)~~, be allocated as follows:

(a) The local government severance tax is statutorily appropriated, as provided in 17-7-502, for allocation to the county for distribution as provided in subsection (4).

(b) The state severance tax is allocated to the state general fund.

(4) (a) For the purpose of distribution of the local government severance tax, the department shall adjust the unit value determined under this section according to the ratio that the local government severance taxes collected during the quarters to be distributed plus accumulated interest earned by the state and penalties and interest on delinquent local government severance taxes ~~bears~~ bear to the total liability for local government severance taxes for the quarters to be distributed. The taxes must be calculated and distributed as follows:

(i) By November 30 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which the local government severance tax was owed during the calendar quarters ending March 31 and June 30 of the preceding calendar year.

(ii) By May 31 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which the local government severance tax was owed during the 2 calendar quarters immediately following those quarters referred to in subsection (4)(a)(i).

(b) Any amount by which the total tax liability exceeds or is less than the total distributions determined in subsections (4)(a)(i) and (4)(a)(ii) must be calculated and distributed in the following manner:

(i) The excess amount or shortage must be divided by the total distribution determined for that period to obtain an excess or shortage percentage.

(ii) The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

(iii) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(5) Except as provided in subsection (6), the county treasurer shall distribute the money received under subsection (4) to the taxing units that levied mills in fiscal year 1990 against calendar year 1988

production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(6) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of local government severance tax money that would have gone to a taxing unit, as provided in subsection (5), to another taxing unit or taxing units, other than an elementary school or high school district, within the county under the following conditions:

(a) The county treasurer shall first allocate the local government severance taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(b) If the allocation in subsection (6)(a) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(7) The board of trustees of an elementary or high school district may reallocate the local government severance taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the local government severance taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If the allocation under subsection (7)(a) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district."

Section 14. Section 15-37-117, MCA, is amended to read:

"**15-37-117. Disposition of metalliferous mines license taxes.** (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501~~(6)~~, be allocated as follows:

(a) to the credit of the general fund of the state, 58% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5% of total collections each year;

(c) to the state resource indemnity trust fund, 15.5% of total collections each year;

(d) to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral

development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(d)(i) to be further allocated as follows:

(A) 33 1/3% is allocated to the county for planning or economic development activities;

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(d) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(d). The allocation to the county described by subsection (1)(d) is a statutory appropriation pursuant to 17-7-502."

Section 15. Section 15-51-103, MCA, is amended to read:

"**15-51-103. Disposition of revenue -- interest on delinquency.** The department of revenue shall, in accordance with the provisions of 15-1-501~~(6)~~, promptly remit the collected taxes to the state treasurer. Taxes not paid on the due date are delinquent, and a penalty of 10% plus interest at the rate of 1% per month or fraction of a month computed on the total of tax and penalty must be charged."

Section 16. Section 15-53-114, MCA, is amended to read:

"**15-53-114. Disposal of license taxes.** License taxes collected under this chapter must, in accordance with the provisions of 15-1-501~~(6)~~, be credited to the general fund of the state."

Section 17. Section 15-59-108, MCA, is amended to read:

"**15-59-108. Deposit of taxes.** All license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501~~(6)~~, be deposited to the credit of the general fund of the state."

Section 18. Section 15-59-208, MCA, is amended to read:

"**15-59-208. Deposit of license taxes.** All license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501~~(6)~~, be deposited to the credit of the general fund of the state."

Section 19. Section 15-60-210, MCA, is amended to read:

"**15-60-210. Disposition of fee -- nursing facility account.** (1) All proceeds from the collection of utilization fees, including penalties and interest, must, in accordance with the provisions of 15-1-501~~(6)~~, be deposited in the nursing facility state special revenue account established in subsection (2).

(2) There is a nursing facility account in the state special revenue fund. The purpose of the account is to provide a continuing source of revenue for nursing facility reimbursements as appropriated by the legislature."

Section 20. Section 15-65-121, MCA, is amended to read:

"**15-65-121. Distribution of tax proceeds -- general fund loan authority.** (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 15-1-501~~(6)~~, be deposited in an account in the state special revenue fund to the credit of the department of revenue. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501~~(6)~~ and as provided in subsections (1)(a) through (1)(d) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the general fund. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation or deposited in the general fund is statutorily appropriated, as provided in 17-7-502, and must be transferred

to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use, subject to 23-1-131; and

(d) the balance of the proceeds as follows:

(i) 75% to be used directly by the department of commerce;

(ii) except as provided in subsection (1)(d)(iii), 25% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(iii) if 25% of the proceeds collected annually within the limits of a city or consolidated city-county exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city or consolidated city-county is located is to be distributed to the nonprofit convention and visitors bureau in that city or consolidated city-county.

(2) If a city or consolidated city-county qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city or consolidated city-county is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials.

(4) The department of commerce may use general fund loans for efficient implementation of this section."

Section 21. Section 15-70-101, MCA, is amended to read:

"**15-70-101. Disposition of funds.** (1) All taxes, interest, and penalties collected under this chapter, except those collected by a justice's court, must, in accordance with the provisions of 15-1-501~~(6)~~, be placed in the state special revenue fund to the credit of the department of transportation. Those funds allocated to cities, towns, and counties in this section must, in accordance with the provisions of 15-1-501~~(6)~~, be paid by the department of transportation from the state special revenue fund to the cities, towns, and counties.

~~(1)~~(2) The amount of $16,766,000 of the funds collected under this chapter, except those collected by a justice's court, is statutorily appropriated, as provided in 17-7-502, to the department of transportation and must be allocated each fiscal year on a monthly basis to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections ~~(1)(a)~~(2)(a) through ~~(1)(c)~~(2)(c):

(a) The amount of $54,000 must be designated for the purposes and functions of the Montana rural technical assistance transportation program in Bozeman~~;~~.

(b) The amount of $6,323,000 must be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid interstate system and the federal-aid primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state~~;~~.

(c) The amount of $10,389,000 must be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the federal-aid interstate system and the federal-aid primary system, within corporate limits bears to the total street and alley mileage, exclusive of the federal-aid interstate system and federal-aid primary system, within the corporate limits of all cities and towns in Montana.

~~(2)~~(3) All funds allocated by this section to counties, cities, and towns must be used for the construction, reconstruction, maintenance, and repair of rural roads or city or town streets and alleys or for the share that the city, town, or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets that are part of the federal-aid primary or secondary highway system or urban extensions to those systems, except that the governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys.

~~(3)~~(4) All funds allocated by this section to counties, cities, and towns must be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases in which the contract for construction, reconstruction, maintenance, or repair is in excess of $4,000.

~~(4)~~(5) For the purposes of this section in which distribution of funds is made on a basis related to population, the population must be determined by the last preceding official federal census.

~~(5)~~(6) For the purposes of this section in which determination of mileage is necessary for distribution of funds, it is the responsibility of the cities, towns, and counties to furnish to the department of transportation a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted is subject to review and approval by the department of transportation.

~~(6)~~(7) Except by a town or third-class city as provided in subsection ~~(2)~~(3), the funds authorized by this section may not be used for the purchase of capital equipment.

~~(7)~~(8) Funds authorized by this section must be used for construction and maintenance programs ~~only~~."

Section 22. Section 15-71-104, MCA, is amended to read:

"**15-71-104. Disposition of funds.** All taxes collected under this chapter must, in accordance with the provisions of 15-1-501~~(6)~~, be placed in the state special revenue fund to the credit of the department of transportation."

Section 23. Section 16-1-306, MCA, is amended to read:

"**16-1-306. Revenue to be paid to state treasurer.** Except as provided in 16-1-404, 16-1-405,

16-1-408, 16-1-410, and 16-1-411, all fees, charges, taxes, and ~~revenues~~ revenue collected by or under authority of the department must, in accordance with the provisions of 15-1-501~~(6)~~, be deposited to the credit of the state general fund."

Section 24. Section 16-1-401, MCA, is amended to read:

"**16-1-401. Liquor excise tax.** (1) The department shall collect at the time of the sale and delivery of any liquor as authorized under any provision of the laws of the state of Montana an excise tax at the rate of:

(a) 16% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(b) 13.8% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(2) The department shall retain the amount of the excise tax received in a separate account and shall, in accordance with the provisions of 15-1-501~~(6)~~, deposit, to the credit of the general fund, the ~~sums~~ amount collected and received not later than the 10th day of each month."

Section 25. Section 16-1-404, MCA, is amended to read:

"**16-1-404. License tax on liquor -- amount -- distribution of proceeds.** (1) The department shall collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of:

(a) 10% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(b) 8.6% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(2) The license tax must be charged and collected on all liquor brought into the state and taxed by the department. The retail selling price must be computed by adding to the cost of the liquor the state

markup as designated by the department. The license tax must be figured in the same manner as the state excise tax and is in addition to the state excise tax. The department shall retain in a separate account the amount of the license tax received. Thirty percent of ~~these revenues are~~ this revenue is statutorily appropriated, as provided in 17-7-502, to the department and must, in accordance with the provisions of 15-1-501~~(6)~~, be allocated to the counties according to the amount of liquor purchased in each county to be distributed to the incorporated cities and towns, as provided in subsection (3). Four and one-half percent of ~~these revenues are~~ the revenue is statutorily appropriated, as provided in 17-7-502, and must, in accordance with the provisions of 15-1-501~~(6)~~, be allocated to the counties according to the amount of liquor purchased in each county, and this money may be used for county purposes. The remaining ~~revenues~~ revenue must, in accordance with the provisions of 15-1-501~~(6)~~, be deposited in the state special revenue fund to the credit of the department of corrections and human services for the treatment, rehabilitation, and prevention of alcoholism. In the case of purchases of liquor by a retail liquor licensee for use in the licensee's business, the department shall make regulations ~~as are~~ necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in 16-1-405. That proportion of the license tax is statutorily appropriated, as provided in 17-7-502, to the department, which shall pay quarterly to each county treasurer the proportion of the license tax due each county, in accordance with the provisions of 15-1-501~~(6)~~, to be allocated to the incorporated cities and towns of the county.

(3) The license tax proceeds allocated to the county under subsection (2) for use by cities and towns must be distributed by the county treasurer to the incorporated cities and towns within 30 days of receipt from the department. The distribution of funds to the cities and towns must be based on the proportion that the gross sale of liquor in each city or town is to the gross sale of liquor in all of the cities and towns of the county.

(4) The license tax proceeds that are allocated to the department of corrections and human services for the treatment, rehabilitation, and prevention of alcoholism must be credited quarterly to the department of corrections and human services. The legislature may appropriate a portion of the license tax proceeds to support alcohol programs. The remainder must be distributed as provided in 53-24-206."

Section 26. Section 16-1-408, MCA, is amended to read:

"**16-1-408. Additional tax.** An additional tax of $1.30 per barrel is levied and imposed as provided

by 16-1-406. One dollar of the additional tax must, in accordance with the provisions of 15-1-501~~(6)~~, be deposited, notwithstanding 16-1-306 and 16-1-410 or any other provision, with the state treasurer to the credit of the department of corrections and human services each quarter for the treatment, rehabilitation, and prevention of alcoholism, as approved by the state, and 30 cents of the additional tax must be deposited in the general fund."

Section 27. Section 16-1-410, MCA, is amended to read:

"**16-1-410. Tax revenue allocation.** (1) All revenue received from taxes on beer under 16-1-406 and 16-1-408 over and above $1.50 per barrel of 31 gallons must, in accordance with the provisions of 15-1-501~~(6)~~, be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the state special revenue fund. The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of revenue ~~who~~, which shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the latest official federal census as adjusted by the most recent population estimates published by the U.S. bureau of the census. For cities and towns incorporated after the latest official federal census, the census must be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it may not receive any funds under this section and the amount previously distributed to the city or town must be distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section must be expended for state purposes, such as law enforcement, maintenance of the transportation system, and public health.

(2) The department may adjust population estimates only on the July 1 following the date of publication of the estimates by the U.S. bureau of the census. The adjusted distribution formula must remain in effect for the entire fiscal year."

Section 28. Section 16-1-411, MCA, is amended to read:

"**16-1-411. Tax on wine.** (1) A tax of 27 cents per liter is imposed on table wine imported by a table wine distributor or the department.

(2) (a) The tax on table wine imported by a table wine distributor must be paid by the table wine distributor by the 15th day of the month following sale of the table wine from the table wine distributor's

warehouse. Failure to file a table wine tax return or failure to pay the tax required by this section subjects the table wine distributor to the penalties and interest provided for in 16-1-409.

(b) The tax on table wine imported by the department must be collected at the time of sale.

(3) The tax paid by a table wine distributor in accordance with subsection (2)(a) and the tax collected by the department in accordance with subsection (2)(b) must, in accordance with the provisions of 15-1-501~~(6)~~, be distributed as follows:

(a) 16 cents to the state general fund; and

(b) of the remaining 11 cents:

(i) ~~8.34~~ 8 1/3 cents to the state special revenue fund to the credit of the department of corrections and human services for the treatment, rehabilitation, and prevention of alcoholism;

(ii) 1 1/3 cents is statutorily appropriated, as provided in 17-7-502, to the department~~,~~ for allocation to the counties, based on population, for the purpose established in 16-1-404; and

(iii) 1 1/3 cents is statutorily appropriated, as provided in 17-7-502, to the department~~,~~ for allocation to the cities and towns, based on population, for the purpose established in 16-1-405.

(4) The tax computed and paid in accordance with this section is the only tax imposed by the state or any of its subdivisions, including cities and towns.

(5) For purposes of this section~~,~~ "based on population" means:

(a) for counties, the direct proportion that the population of each county bears to the total population of all counties as shown in the latest official federal census as adjusted by the most recent population estimates published by the U.S. bureau of the census as provided in 16-1-410(2); and

(b) for cities, the distribution described in 16-1-410."

Section 29. Section 16-11-119, MCA, is amended to read:

"16-11-119. Disposition of taxes -- retirement of bonds. (1) The amount of 11.11% of the cigarette tax collected under the provisions of 16-11-111 on each package of cigarettes must be deposited in the state special revenue fund to the credit of the department of corrections and human services for the operation and maintenance of state veterans' nursing homes.

(2) All remaining revenue collected under the provisions of 16-11-111, less the expense of collecting the taxes, must, in accordance with the provisions of 15-1-501~~(6)~~, be deposited as follows:

(a) ~~79.25%~~ 79.75% in the long-range building program fund in the debt service fund type~~;~~ and

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(b) 20.25% in the long-range building program fund in the capital projects fund type."

Section 30. Section 16-11-206, MCA, is amended to read:

"**16-11-206. Wholesaler's discount -- disposition of taxes.** The taxes specified in this part that are paid by the wholesaler must be paid to the department in full less a 5% defrayment for the wholesaler's collection and administrative expense and must, in accordance with the provisions of 15-1-501~~(6)~~, be deposited by the department in the long-range building program debt service fund. Refunds of the tax paid must be made as provided in 15-1-503 in cases ~~where~~ in which the tobacco products purchased become unsalable."

Section 31. Section 17-1-503, MCA, is amended to read:

"**17-1-503. Transfer of fund balances to general fund.** ~~On April 29, 1993, the~~ The balance remaining in each special revenue account terminated pursuant to legislative review must be deposited in the general fund."

Section 32. Section 17-6-201, MCA, is amended to read:

"**17-6-201. Unified investment program -- general provisions.** (1) The unified investment program directed by Article VIII, section 13, of the ~~1972~~ Montana constitution to be provided for public funds must be administered by the board of investments in accordance with the prudent expert principle, which requires any investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) (a) Retirement funds may be invested in common stocks of any corporation, except that an investment may not be made at any time that would cause the book value of the investments in any

retirement fund to exceed 50% of the book value of the fund or would cause the stock of one corporation to exceed 2% of the book value of the retirement fund.

(b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(4) The board has the primary authority to invest state funds. ~~Except as provided in this chapter, another~~ Another agency may not invest state funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto any investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received for the property;

(b) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to 17-6-101

and 17-6-105;

(c) direct the sale of any securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased;

(d) expend funds needed to cover costs of necessary repairs to property owned by the board as an investment. The expenditures may be made directly by the board and are statutorily appropriated, as provided in 17-7-502. Repairs that cost in excess of $2,500 must be bid, and the bid must be awarded in compliance with existing state law and regulations. Emergency repairs may be made by the board without bid if approved by the state architect.

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund.

(8) At the beginning of each fiscal year, the board shall, from the appropriate fund, reimburse the department of commerce for the costs of administering programs established under Title 90, chapter 3, that are not covered by payback funds available from the account established in 90-3-305."

Section 33. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; ~~15-25-123;~~ 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; ~~19-15-101;~~ 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503; 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402;

27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates July 1, 1995.)"

Section 34. Section 20-7-436, MCA, is amended to read:

"**20-7-436. Definitions.** For the purposes of 20-7-435 and this section, the following definitions apply:

(1) (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that:

(i) has the primary purpose of providing clinical care for children and youth whose clinical diagnosis and resulting treatment plan require in-house residential psychiatric care; and

(ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of the health care financing administration, or other comparable accreditation.

(b) The term does not include programs for children and youth ~~that have~~ for whom the treatment of chemical dependency ~~as~~ is the primary reason for treatment.

(2) "Eligible child" means a child or youth who is less than 19 years of age, ~~and~~ who is emotionally disturbed as defined in 20-7-401 ~~or 52-2-101~~, and whose emotional problem is so severe that the child or youth has been placed in a children's psychiatric hospital or residential treatment facility for inpatient treatment of emotional problems.

(3) (a) "Residential treatment facility" means a facility in the state that:

(i) provides services for children or youth with emotional disturbances;

(ii) operates for the primary purpose of providing residential psychiatric care to ~~persons~~ individuals under 21 years of age;

(iii) is licensed by the department of health and environmental sciences; and

(iv) participates in the Montana medicaid program for psychiatric facilities or programs providing psychiatric services to individuals under 21 years of age; or

(v) notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv), has received a certificate of need from the department of health and environmental sciences pursuant to Title 50, chapter 5, part 3, prior to January 1, 1993.

(b) The term does not include programs for children and youth ~~who have~~ for whom the treatment of chemical dependency ~~as a~~ is the primary reason for treatment."

Section 35. Section 20-9-104, MCA, is amended to read:

"**20-9-104. General fund operating reserve.** (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections (5) and (6), the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) Excess reserves as provided in subsection (5) may be appropriated to reduce the BASE budget levy, the over-BASE budget levy, or the additional levy provided by 20-9-353~~, except that districts with a balance on June 30, 1993, in the excess reserve account for Public Law 81-874 funds shall transfer the June 30, 1993, balance to the impact aid fund established in 20-9-514~~.

(4) Any portion of the general fund end-of-the-year fund balance that is not reserved under subsection (2) or reappropriated under subsection (3) is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b).

(5) ~~For fiscal year 1994 and subsequent fiscal years, the~~ The limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the unused balance of any

amount received:

(a) in settlement of tax payments protested in a prior school fiscal year;

(b) in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; and

(c) in delinquent taxes from a prior school fiscal year.

(6) The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is $10,000 or less."

Section 36. Section 20-9-115, MCA, is amended to read:

"**20-9-115. Notice of preliminary budget filing and final budget meeting.** Between July 10 and July 20 of each year, the clerk of each district shall publish one notice ~~one-time~~, in the local or county newspaper that the trustees of the district determine to be the newspaper with the widest circulation in the district, stating that the preliminary budget for the district for the school fiscal year just beginning, as prepared and adopted by the trustees, is on file in ~~his~~ the clerk's office and open to inspection by all taxpayers. The notice must also state the time and place that the trustees will meet on the fourth Monday in ~~July~~ August for the purpose of considering and adopting the final budget of the district, that the meeting of the trustees may be continued from day to day until the final adoption of the district's budget, and that any taxpayer in the district may appear at the meeting and be heard for or against any part of the budget."

Section 37. Section 20-9-314, MCA, is amended to read:

"**20-9-314. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase.** A district that anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in 20-9-313(4), may increase its basic entitlement and total per-ANB entitlement for the ensuing school fiscal year in accordance with the following provisions:

(1) Prior to May 10, the district shall estimate the elementary or high school enrollment to be realized during the ensuing school fiscal year, based on as much factual information as may be available to the district.

(2) No later than May 10, the district shall submit its application for an unusual enrollment increase by elementary or high school level to the superintendent of public instruction. The application must include:

(a) the enrollment for the current school fiscal year;

(b) the average number belonging used to calculate the basic entitlement and total per-ANB entitlement for the current school fiscal year;

(c) the average number belonging that will be used to calculate the basic entitlement and total per-ANB entitlement for the ensuing school fiscal year;

(d) the estimated enrollment, including the factual information on which the estimate is based, as provided in subsection (1); and

(e) any other information or data that may be requested by the superintendent of public instruction.

(3) The superintendent of public instruction shall immediately review all the factors of the application and shall approve or disapprove the application or adjust the estimated average number belonging for the ensuing ANB calculation period. After approving an estimate, with or without adjustment, the superintendent of public instruction shall:

(a) determine the percentage increase that the estimated enrollment increase is over the current enrollment; and

(b) approve an increase of the average number belonging used to establish the ensuing year's basic entitlement and total per-ANB entitlement in accordance with subsection (5) if the increase in subsection (3)(a) is at least 6%.

(4) The superintendent of public instruction shall notify the district of the decision by the fourth Monday in June.

(5) Whenever an unusual enrollment increase is approved by the superintendent of public instruction, the increase of the average number belonging used to establish the basic entitlement and total per-ANB entitlement for the ensuing ANB calculation period is the difference between the enrollment for the ensuing school fiscal year and 106% of the current enrollment. The amount determined is the maximum allowable increase added to the average number belonging for the purpose of establishing the ensuing year's basic entitlement and total per-ANB entitlement.

(6) Any entitlement increases resulting from provisions of this section must be reviewed at the end of the ensuing school fiscal year. If the actual enrollment is less than the average number belonging used for BASE funding program and entitlement calculations, the superintendent of public instruction shall revise the total per-ANB entitlement calculations using the actual average number belonging. All total per-ANB entitlements received by the district in excess of the revised entitlements are overpayments subject to the refund provisions of 20-9-344~~(3)~~ (4)."

Section 38. Section 20-9-370, MCA, is amended to read:

"**20-9-370. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "School facility entitlement" means:

(a) $220 per ANB for an elementary school district;

(b) $330 per ANB for a high school district; or

(c) $270 per ANB for an approved and accredited junior high school or middle school.

(2) "State reimbursement for school facilities" means the amount of state equalization aid distributed to a district that:

(a) is eligible for guaranteed tax base aid under the provisions of 20-9-366 through 20-9-369; and

(b) ~~(i) for the school fiscal years beginning July 1, 1993, and July 1, 1994, has outstanding bonded indebtedness on bonds sold in the debt service fund of the district after July 1, 1991;~~

~~(ii)~~ for the school fiscal year beginning July 1, 1995, and for succeeding school fiscal years, has outstanding bonded indebtedness on bonds sold in ~~[~~and payable from~~]~~ the debt service fund of the district in any year.

(3) "Total school facility entitlement" means the school facility entitlement times the total ANB for the district."

Section 39. Section 20-9-466, MCA, is amended to read:

"**20-9-466. School district bonds -- state loan -- qualifications for state loan.** (1) The department of administration shall make a loan from the coal severance tax school bond contingency loan fund established in 17-5-703~~(1)(c)~~, to a school district in an amount equal to the principal and interest payments on qualifying bonds when due in accordance with the provisions contained in the bonds. In order to receive a loan, the school district must:

(a) have issued bonds between January 21, 1992, and January 1, 1993, pursuant to 20-9-42 and 20-9-464;

(b) be prevented from making principal and interest payments on the bonds because the debt service levy for the bonds:

(i) has been declared invalid or unenforceable under Article II, section 4, or Article X, section of the Montana constitution by a final court order; or

(ii) is prevented by an injunction;

(c) have exhausted the debt service reserve for the bonds; and

(d) have complied with all the requirements for the bonds contained in 20-9-467 and this section.

(2) To qualify for the state loan described in subsection (1), a school district, before issuing its bonds, must have:

(a) received voter approval for bonds pursuant to 20-9-421;

(b) following voter approval, received a certificate of eligibility from the board of public education stating that after consultation with the superintendent of public instruction, the board has determined that a minimum of 75% of the principal amount of the proposed bonds will be used to:

(i) restore, rebuild, or replace a destroyed or severely damaged school building;

(ii) correct one or more building deficiencies that affect the health and safety of school children;

(iii) correct one or more deficiencies that prevent the school district from meeting current accreditation standards; or

(iv) address any combination of circumstances described under subsections (2)(b)(i) through (2)(b)(iii); and

(c) received a final certificate of allocation from the department of administration pursuant to subsection (5).

(3) The board of public education shall:

(a) maintain a record of the total principal amount of bonds for which certification has been issued; and

(b) immediately furnish to the department a copy of each certificate issued.

(4) Upon receipt of a copy of the certificate from the board of public education, the department shall temporarily allocate loan authority to the school district equal to the principal amount of bonds indicated in the board's certificate. The principal amount of bonds for which final certification is issued may be less than the principal amount of bonds approved by the voters pursuant to subsection (2)(a).

(5) To obtain a final certificate of allocation, a school district shall provide the department, on a form provided by the department, the following information:

(a) the tentative date of sale of the school district's bonds;

(b) the principal amount of the bonds to be issued;

(c) the name and addresses of bond counsel and the financial advisor; and

(d) other information as requested by the department.

(6) Upon issuance of the bonds, a school district shall forward to the department a copy of the district's bond resolution, the final opinion of bond counsel on the bonds, and a schedule of principal and interest payments on the bonds to maturity. The bond resolution must include a covenant agreeing to:

(a) defend any lawsuit challenging the school district's authority to sell and issue the bonds and to levy a tax for payment of the principal of and interest on the bonds;

(b) provide to the department before August 1 of each year a report of the school district's outstanding principal balance as of the preceding June 30 on the bonds secured by state loans;

(c) refund the bonds on any normal call date if, during the term of the bonds, the school district can refund its bonds without the state loan security and without increasing its total debt service costs on the bonds; and

(d) enter into a contract with the department establishing a schedule to repay the state if the state loans the school district money to make payments on district bonds. Notwithstanding other provisions of law, the loan must be repaid by the school district at a rate equivalent to the average yield of the pooled investment fund established in 17-6-203(3), commonly known as the short-term investment pool, for the period of the loan. Repayment must begin no later than January 1, 1994, and the loan must be repaid in full within 10 years from the date the first loan is issued to a school district. Repayment must be paid from the sources designated for repayment of the bonds or from any other revenue and assets of the school district, including state equalization funds currently distributed or which may be distributed to the district. Loan repayments received by the department must be deposited in the coal severance tax school bond contingency loan fund.

(7) The department shall maintain a record of the total principal amount of bonds secured by state loans.

(8) A school district issuing bonds subject to 20-9-467 and this section may apply to the attorney general for a determination as to whether its bonds are affected by a court order declaring that the bonds of another district are invalid or unenforceable.

(9) A school district whose authority to levy a property tax to pay principal of and interest on bonds has been challenged shall, upon notification of the challenge, immediately notify the attorney general and the department."

Section 40. Section 23-5-610, MCA, is amended to read:

"**23-5-610. Video gambling machine gross income tax -- records -- distribution -- quarterly statement and payment.** (1) A licensed operator issued a permit under this part shall pay to the department a video gambling machine tax of 15% of the gross income from each video gambling machine licensed under this part. A licensed operator may deduct from the gross income amounts equal to amounts stolen from machines if the amounts stolen are not repaid by insurance or under a court order, if a law enforcement agency investigated the theft, and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented.

(2) A licensed operator issued a permit under this part shall keep a record of the gross income from each machine in the form the department ~~may require~~ requires. The records must at all times during the business hours of the licensee be subject to inspection by the department.

(3) A licensed operator issued a permit under this part shall, within 15 days after the end of each quarter, complete and deliver to the department a statement showing the total gross income from each video gambling machine licensed to the operator, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information ~~as~~ that the department ~~may require~~ requires.

(4) (a) The department shall, in accordance with the provisions of 15-1-501~~(6)~~, forward one-third of the tax collected under subsection (3) to the general fund.

(b) The department shall, in accordance with the provisions of 15-1-501~~(6)~~, forward the remaining two-thirds of the tax collected under subsection (3) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed machine is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from taxes on income from video gambling machines located in incorporated cities and towns. The two-thirds local government portion of tax collected under subsection (3) is statutorily appropriated to the department as provided in 17-7-502 for deposit to the county or municipal treasury."

Section 41. Section 26-1-602, MCA, is amended to read:

"**26-1-602. Disputable presumptions.** All other presumptions are "disputable presumptions" and may be controverted by other evidence. The following are of that kind:

(1) A person is innocent of crime or wrong.

(2) An unlawful act was done with an unlawful intent.

(3) A person intends the ordinary consequence of ~~his~~ the person's voluntary act.

(4) A person takes ordinary care of ~~his~~ the person's own concerns.

(5) Evidence willfully suppressed would be adverse if produced.

(6) More satisfactory evidence would be adverse if weaker and less satisfactory evidence is offered and it is within the power of the party to offer more satisfactory evidence.

(7) Money paid by one to another was due the latter.

(8) A thing delivered by one to another belonged to the latter.

(9) When the instrument evidencing an obligation has been delivered to the debtor, the obligation has been paid.

(10) Prior rent or installments have been paid when a receipt for later rent or installments is produced.

(11) Things ~~which~~ that a person possesses are owned by ~~him~~ the person.

(12) A person is the owner of property if ~~he~~ the person exercises acts of ownership over it or there is common reputation of ~~his~~ the person's ownership.

(13) A person in possession of an order on ~~himself~~ the person for the payment of money or the delivery of a thing has paid the money or delivered the thing accordingly.

(14) A person acting in a public office was regularly appointed to it.

(15) Official duty has been regularly performed.

(16) A court or judge acting as such, whether in this state or any other state or country, was acting in the lawful exercise of ~~its~~ the court's or ~~his~~ judge's jurisdiction.

(17) A judicial record, when not conclusive, does still correctly determine or set forth the rights of the parties.

(18) All matters within an issue were laid before the jury and passed upon by them, and in like manner, all matters within a submission to arbitration were laid before the arbitrators and passed upon by them.

(19) Private transactions have been fair and regular.

(20) The ordinary course of business has been followed.

(21) A promissory note or bill of exchange was given or endorsed for a sufficient consideration.

(22) An endorsement of a negotiable promissory note or bill of exchange was made at the time and place of making the note or bill.

(23) A writing is truly dated.

(24) A letter duly directed and mailed was received in the regular course of the mail.

(25) There is an identity of persons when there is an identity of names.

(26) A person not heard from in ~~7~~ 5 years is dead.

(27) Acquiescence followed from a belief that the thing acquiesced in was conformable to the right or fact.

(28) Things have happened according to the ordinary course of nature and the ordinary habits of life.

(29) Persons acting as partners have entered into a contract of partnership.

(30) A man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage.

(31) A child born in lawful wedlock~~, there being no divorce from bed and board,~~ is legitimate.

(32) A thing once proved to exist continues as long as is usual with things of that nature.

(33) The law has been obeyed.

(34) A printed and published book purporting to be printed or published by public authority was so printed or published.

(35) A printed and published book purporting to contain reports of cases adjudged in the tribunals of the state or country where the book is published contains correct reports of such cases.

(36) A trustee or other person whose duty it was to convey real property to a particular person has actually conveyed the property to ~~him~~ the particular person. This presumption applies when it is necessary to perfect the title of ~~such~~ the person or ~~his~~ the person's successor in interest.

(37) When there has been uninterrupted use by the public of land for a burial ground for 5 years, with the consent of the owner and without a reservation of ~~his~~ rights, ~~he~~ the owner intended to dedicate it to the public for that purpose.

(38) There was a good and sufficient consideration for a written contract."

Section 42. Section 32-3-704, MCA, is amended to read:

"**32-3-704. Risk assets defined.** For the purpose of establishing the reserves required, all assets

except the following are considered risk assets:

(1) cash on hand;

(2) deposits and shares in federal or state banks, savings and loan associations, and credit unions;

(3) assets that are insured, fully guaranteed as to principal and interest, or due from the United States government~~,~~ or its agencies, the federal national mortgage association, or the government national mortgage association;

(4) loans to other credit unions;

(5) loans to students insured under the ~~provision~~ provisions of Title IV, part B, of the Higher Education Act of 1965, or similar state insurance programs;

(6) loans insured under Title I of the National Housing Act by the federal housing administration;

(7) shares in ~~central~~ corporate credit unions organized under this chapter or of any other state law or of the Federal Credit Union Act;

(8) common trust investments that deal in investments authorized by this chapter;

(9) prepaid expenses;

(10) accrued interest on nonrisk investments;

(11) loans fully secured by a pledge of shares in the lending credit union, equal to and maintained to at least the amount of the loan outstanding;

(12) furniture and equipment; and

(13) land and buildings."

Section 43. Section 32-3-801, MCA, is amended to read:

"**32-3-801. Organization.** A corporate credit union may be organized and operated under this chapter and is subject to all provisions not inconsistent with this ~~chapter~~ part. The credit union shall use the term "corporate" in its official name."

Section 44. Section 37-17-102, MCA, is amended to read:

"**37-17-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Accredited college or university" means a college or university accredited by the regional accrediting association for institutions of higher learning, such as the northwest association of ~~secondary~~

~~and higher schools~~ schools and colleges.

(2) "Board" means the board of psychologists provided for in 2-15-1851.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(4) (a) "Practice of psychology" means the observation, description, interpretation, and modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of eliminating symptomatic, maladaptive, or undesired behavior and improving interpersonal relations, work and life adjustment, personal effectiveness, and mental health.

(b) The practice of psychology includes but is not limited to psychological testing and evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis and therapy; diagnosis and treatment of mental and emotional disorders or disabilities, chemical dependency, substance abuse, and the psychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation.

(5) A person represents ~~himself to be~~ to the public that the person is a "psychologist" when ~~he holds himself out to the public by~~ the person uses a title or description of services incorporating the words "psychologist", "psychological", "psychologic", or "psychology" and offers to render or renders psychological services defined in subsection (4) to individuals, groups, corporations, or the public, whether or not ~~he~~ the person does so for compensation or fee."

Section 45. Section 39-51-304, MCA, is amended to read:

"**39-51-304. Personnel.** The department shall hire personnel to administer this chapter in accordance with ~~merit system~~ principles adopted by the department of administration."

Section 46. Section 39-71-532, MCA, is amended to read:

"**39-71-532. Penalties and remedies for underinsuring.** (1) (a) The department may require that an underinsured employer pay to the department a penalty of up to double the premium that the employer would have paid if the employer had properly classified the employee or $200, whichever is greater. In determining the amount for the calculation of the penalty under this subsection (a), the department shall make an assessment on how much premium would have been paid on the employer's payroll for the past ~~3-year payroll~~ 3 years for periods within the 3 years when the employer was underinsured. The department

shall determine the amount of the penalty based upon the gravity of the violation and the clarity of the relevant classification codes. The determination by the department is subject to the provisions in 39-71-204.

(b) The penalty provided in subsection (1)(a) may be assessed against the employer for each employee not properly classified.

(c) The fund must receive from an underinsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the underinsured employer. However, the ~~uninsured~~ underinsured employer's liability under this subsection (c) may not exceed $50,000.

(2) When the department discovers an underinsured employer, it may order the employer to cease operations until the employer's employees are properly classified and the correct premium rates are being paid to the insurer.

(3) An employer who does not comply with the department's order to cease operations is guilty of a misdemeanor. Each day of violation is a separate offense. The county attorney may bring a criminal action under this subsection in the county in which the violation occurs. Prosecution under this subsection does not bar the department from enforcing its order by a civil action.

(4) The department may institute and maintain in the name of the state, through the attorney general or the county attorney, an action for an injunction order or other civil remedy in district court to enforce its order to cease operations.

(5) This section does not limit a private insurer's civil remedies to collect premiums owed by the employer for paying insufficient premiums due to misclassification of employees."

Section 47. Section 39-71-2504, MCA, is amended to read:

"39-71-2504. Workers' compensation tax account. (1) There is a workers' compensation tax account in the state special revenue fund. The workers' compensation tax account consists of a tax account and a workers' compensation bond repayment account.

(2) All collections of the tax imposed under 39-71-2503, interest and penalties on the tax, and revenue appropriated to the workers' compensation tax account under section 11, Chapter 9, Special Laws of June 1989, must, in accordance with the provisions of 15-1-501~~(6)~~, be deposited in the workers' compensation tax account. All money deposited in the workers' compensation tax account must be credited to the workers' compensation bond repayment account to the extent necessary to pay the principal of and

redemption premium and interest due on workers' compensation bonds issued under 39-71-2354 and 39-71-2355 and to establish and maintain a reserve for the bonds equal to the maximum annual principal of and interest on the bonds in any future year. The balance in the workers' compensation bond repayment account must be credited to the tax account within the workers' compensation tax account and is statutorily appropriated, as provided in 17-7-502, to the state fund to be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 48. Section 40-4-215, MCA, is amended to read:

"**40-4-215. Investigations and reports.** (1) In contested custody proceedings and in other custody proceedings if a parent or the child's custodian requests, the court may order an investigation and report concerning custodial arrangements for the child. The department of family services may not be ordered to conduct the investigation or draft a report unless the parent or the child's custodian requesting the investigation is a recipient of aid to families with dependent children, food stamps, ~~[or general relief benefits]~~ or public assistance and all reasonable options for payment of the investigation, if conducted by a person not employed by the department, are exhausted. The department may consult with any investigator and share information relevant to the child's best interests. The cost of the investigation and report must be paid according to the final order.

(2) In preparing a report concerning a child, the investigator may consult any person who may have information about the child and the child's potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if the child has reached the age of 16 unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and the names and

addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing."

Section 49. Section 41-5-311, MCA, is amended to read:

"**41-5-311. Youth not to be detained in jail -- exceptions -- time limitations.** (1) A youth may not be detained or otherwise placed in a jail or other adult detention facility except as provided in 41-5-206 and this section.

(2) A youth who has allegedly committed an offense that~~,~~ if committed by an adult~~,~~ would constitute a criminal offense may be temporarily detained in a jail or other adult detention facility for a period not to exceed:

(a) 6 hours, but in no case overnight, for the purpose of identification, processing, or transfer of the youth to an appropriate detention facility or shelter care facility; or

(b) 24 hours, excluding weekends and legal holidays, if the youth is awaiting a probable cause hearing pursuant to 41-5-303.

(3) The exception provided for in subsection (2)(b) applies only if:

(a) the court having jurisdiction over the youth is outside a ~~standard~~ metropolitan statistical area;

(b) alternative facilities are not available or alternative facilities do not provide adequate security; and

(c) the youth is kept in an area that provides physical~~,~~ as well as sight and sound~~,~~ separation from adults accused or convicted of criminal offenses.

(4) Whenever, despite all good faith efforts to comply with the time limitations specified in subsection (2), the limitations are exceeded, this circumstance does not serve as grounds for dismissal of the case nor does this circumstance constitute a defense in a subsequent delinquency or criminal proceeding."

Section 50. Section 45-2-101, MCA, is amended to read:

"**45-2-101. General definitions.** Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons, as defined in this code, other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare the beneficiary is interested. Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same offense or that affects the same person or the same persons or the property of the same person or persons.

(8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to that device in a system or network.

(9) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(10) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(11) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(12) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(13) "Computer system" means a set of related, connected, or unconnected devices, computer

software, or other related computer equipment.

(14) "Conduct" means an act or series of acts and the accompanying mental state.

(15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(16) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(17) "Deception" means knowingly to:

(a) create or confirm in another an impression that is false and that the offender does not believe to be true;

(b) fail to correct a false impression that the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

(18) "Defamatory matter" means anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or occupation.

(19) "Deprive" means:

(a) to withhold property of another:

~~(a)~~(i) permanently;

~~(b)~~(ii) for such a period as to appropriate a portion of its value; or

~~(c)~~(iii) with the purpose to restore it only upon payment of reward or other compensation; or

~~(d)~~(b) to dispose of the property of another and use or deal with the property so as to make it unlikely that the owner will recover it.

(20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(21) "Felony" means an offense in which the sentence imposed upon conviction is death or

imprisonment in the state prison for any term exceeding 1 year.

(22) "Forcible felony" means any felony that involves the use or threat of physical force or violence against any individual.

(23) A "frisk" is a search by an external patting of a person's clothing.

(24) "Government" includes any branch, subdivision, or agency of the government of the state or any locality within it.

(25) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare the affected person is interested.

(26) A "house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(27) "Human being" means a person who has been born and is alive.

(28) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(29) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(30) "Intoxicating substance" means any controlled substance, as defined in Title 50, chapter 32, and any alcoholic beverage, including but not limited to any beverage containing 1/2 of 1% or more of alcohol by volume. Intoxicating substance does not include dealcoholized wine or any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(31) An "involuntary act" means any act that is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(32) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to

attend as a prospective juror.

(33) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

(34) "Mentally defective" means that a person suffers from a mental disease or defect that renders the person incapable of appreciating the nature of the person's own conduct.

(35) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling the person's own conduct as a result of the influence of an intoxicating substance.

(36) "Misdemeanor" means an offense ~~in~~ for which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or ~~in~~ for which the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

(37) "Negligently"--a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

(38) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance of the labor or service.

(39) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

(40) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each

unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(41) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(42) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(43) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(44) "Official proceeding" means a proceeding heard or that may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.

(45) "Other state" means any state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(46) "Owner" means a person other than the offender who has possession of or any other interest in the property involved, even though the interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(47) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(48) "Peace officer" means any person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority.

(49) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(50) "Person" includes an individual, business association, partnership, corporation, government,

or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision of government.

(51) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(52) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(53) "Premises" includes any type of structure or building and any real property.

(54) "Property" means any tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things that are part of or affixed to any building;

(g) electricity, gas, and water;

(h) birds, animals, and fish that ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) any other articles, materials, devices, substances, and any whole or partial copies, descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and any copies thereof.

(55) "Property of another" means real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

(56) "Public place" means any place to which the public or any substantial group has access.

(57) "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

(58) "Purposely"--a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

(59) (a) "Serious bodily injury" means bodily injury that:

(i) creates a substantial risk of death;

(ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ; or

(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ.

(b) The term includes serious mental illness or impairment.

(60) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

(61) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(62) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(63) "State" or "this state" means the state of Montana, all the land and water in respect to which

the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

(64) "Statute" means any act of the legislature of this state.

(65) "Stolen property" means property over which control has been obtained by theft.

(66) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in the peace officer's presence.

(67) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(68) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of a criminal offense;

(e) expose any person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of any person;

(g) reveal any information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(69) (a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than $500 by the standards set forth in subsection (69)(a), its value is considered to be an amount less than $500.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(70) "Vehicle" means any device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operator.

(71) "Weapon" means any instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(72) "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 51. Section 45-5-206, MCA, is amended to read:

"**45-5-206. Domestic abuse.** (1) A person commits the offense of domestic abuse if the person:

(a) purposely or knowingly causes bodily injury to a family member or partner;

(b) negligently causes bodily injury to a family member or partner with a weapon during or in connection with a quarrel, fight, or abusive behavior; or

(c) purposely or knowingly causes reasonable apprehension of bodily injury in a family member or partner. The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused must be presumed in any case in which a person knowingly points a firearm at or in the direction of a family member or partner, whether or not the offender believes the firearm to be loaded.

(2) For the purposes of 46-6-311 and this section, the following definitions apply:

(a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(b) "Partner" means spouses, former spouses, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.

(3) A person convicted of domestic abuse for the first or second time shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. On a third or subsequent conviction for domestic abuse, the person convicted shall be fined not less than $500 and not more than $50,000 and be imprisoned ~~in the county jail or in the state prison~~ for a term not less than 10 days and not more than 5 years~~, or both~~. If the term of imprisonment does not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the state prison.

(4) (a) A person convicted of domestic abuse shall be required to pay for and complete at least 6 months of counseling, totaling at least 25 hours:

(i) with a person licensed under Title 37, chapter 3, 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

(b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the convicted person. Subsection (4)(a) does not prohibit the placement of the convicted person in other appropriate treatment if the court determines that there is no available treatment program directed to the violent conduct of the convicted person.

(c) Upon completion of the minimum counseling requirements, the counselor shall notify the court that the defendant has completed the minimum counseling requirements and shall provide the court with a recommendation as to whether or not the defendant requires additional counseling. Upon recommendation of the counselor and direction of the court, the defendant may be required to pay for and complete additional counseling or additional treatment, such as chemical dependency treatment, or both.

(5) Willful failure to obtain or pay for counseling ordered under this section is a civil contempt of court."

Section 52. Section 46-11-111, MCA, is amended to read:

"**46-11-111. Amending complaint.** A court may allow a complaint to be amended under the same circumstances and in the same manner as an information as provided in ~~46-11-103~~ 46-11-205."

Section 53. Section 46-18-248, MCA, is amended to read:

"**46-18-248. Rights of crime ~~victims'~~ victims compensation and assistance account.** (1) Whenever a victim is paid from the crime ~~victims'~~ victims compensation and assistance account established in 53-9-109 for loss arising out of a criminal act, the account is subrogated, to the extent of the account's payment to the victim, to the rights of the victim to any restitution ordered by the court.

(2) The rights of the crime ~~victims'~~ victims compensation and assistance account are subordinate to the claims of multiple victims who have suffered loss arising out of multiple offenses by the same offender or arising from any transaction ~~which~~ that is part of the same continuous scheme of criminal activity of an offender."

Section 54. Section 46-18-250, MCA, is amended to read:

"**46-18-250. Victim's location unknown -- payments to restitution fund -- use of restitution fund.** (1) If the location of a victim on whose behalf restitution is being paid is unknown, the court may order that restitution payments made on that victim's behalf be deposited in a fund known as the county restitution fund. Subject to the availability of money in the fund, if the whereabouts of a victim whose restitution payments were deposited in the county restitution fund become known, the county shall refund to the victim payments that were deposited in the fund.

(2) Money in the restitution fund may be used to provide payments on behalf of offenders who are ordered to pay restitution but, due to circumstances beyond their control, are unable to obtain employment or are unable to obtain employment sufficient to make restitution payments and sustain themselves and their dependents. The offender may perform community service, and for each hour of community service performed, the victim shall receive an amount equal to the minimum hourly wage from the county restitution fund. A judge may order an offender to perform community service work for restitution payments upon a finding that the offender would not otherwise be able to make restitution payments and that there are funds available in the county restitution fund for payments to the victim.

(3) ~~Moneys~~ Money in the county restitution fund that ~~are~~ is due to a victim under this part must

be paid to the crime victims compensation and assistance account, ~~as defined~~ established in 53-9-109, if payments have been made to or on behalf of the victim from the account. Payment from the county restitution fund to the crime victims compensation and assistance account may be made only from ~~moneys~~ money paid by the offender who caused the injury or death that resulted in the payment from the account."

Section 55. Section 46-18-304, MCA, is amended to read:

"**46-18-304. Mitigating circumstances.** (1) Mitigating circumstances are any of the following:

~~(1)~~(a) The defendant has no significant history of prior criminal activity.

~~(2)~~(b) The offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.

~~(3)~~(c) The defendant acted under extreme duress or under the substantial domination of another person.

~~(4)~~(d) The capacity of the defendant to appreciate the criminality of ~~his~~ the defendant's conduct or to conform ~~his~~ the defendant's conduct to the requirements of law was substantially impaired.

~~(5)~~(e) The victim was a participant in the defendant's conduct or consented to the act.

~~(6)~~(f) The defendant was an accomplice in an offense committed by another person, and ~~his~~ the defendant's participation was relatively minor.

~~(7)~~(g) The defendant, at the time of the commission of the crime, was less than 18 years of age.

~~(8)~~(2) ~~Any~~ The court may consider any other fact that exists in mitigation of the penalty."

Section 56. Section 52-2-101, MCA, is amended to read:

"**52-2-101. Definitions.** As used in this part, the following definitions apply:

(1) "Child welfare services" means the establishing, extending, and strengthening of child welfare services (especially in predominantly rural areas) for the protection and care of abused, dependent, or neglected children.

(2) "Department" means the department of family services provided for in 2-15-2401.

~~(3) (a) "Emotionally disturbed child" means a child determined by a psychologist, psychiatrist, licensed social worker, or special education child study team (established under rules adopted by the superintendent of public instruction to implement Title 20, chapter 7, part 4) to have:~~

~~(i) an identifiable mental health problem as identified in a nationally recognized classification system~~

~~or as defined in 20-7-401(8); and~~

~~(ii) a substantial impairment, evident for a reasonable length of time, that is characterized by a dysfunction in any of the following areas:~~

~~(A) relationships;~~

~~(B) behavior;~~

~~(C) cognition; or~~

~~(D) education.~~

~~(b) The nationally recognized classification system referred to in subsection (3)(a)(i) must be one recognized by rules established by the department.~~

~~(4) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.~~"

Section 57. Section 52-2-505, MCA, is amended to read:

"**52-2-505. Records to be confidential.** All records regarding subsidized adoption ~~shall be~~ are confidential and may be disclosed only in accordance with the provisions of ~~40-8-122~~ 40-8-126."

Section 58. Section 52-3-813, MCA, is amended to read:

"**52-3-813. Confidentiality.** (1) The case records of the departments of social and rehabilitation services and family services, their local affiliate, the county attorney, and the court, concerning actions taken under this part, and all reports made pursuant to 52-3-811 must be kept confidential except as provided by this section.

(2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a physician who is caring for an older person or a developmentally disabled person who the physician reasonably believes was abused, sexually abused, neglected, or exploited;

(b) a legal guardian or conservator of the older person or the developmentally disabled person if the identity of the person who made the report is protected and the legal guardian or conservator is not the person suspected of the abuse, sexual abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being abused, sexually abused, neglected, or exploited if that person is not legally incompetent;

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, sexual abuse, neglect, or exploitation is later convicted of an offense constituting abuse, sexual abuse, neglect, or exploitation and if the identity of the older person or the developmentally disabled person who is the subject of the report is not disclosed to the researcher;

(e) an adult protective service team. Members of the team are required to keep information about the subject individuals confidential.

(f) an authorized representative of a provider of services to a person alleged to be an abused, sexually abused, neglected, or exploited older person or developmentally disabled person~~,~~ if:

(i) the department and the provider are parties to a contested case proceeding under Title 2, chapter 4, part 6, resulting from action by the department adverse to the license of the provider and if information contained in the records or reports of the department is relevant to the case; or

(ii) disclosure to the provider is determined by the department to be necessary to protect an interest of a person alleged to be an abused, sexually abused, neglected, or exploited older person or developmentally disabled person;

(g) an employee of the department or the department of social and rehabilitation services if disclosure of the record or report is necessary for administration of a program designed to benefit a person alleged to be an abused, sexually abused, neglected, or exploited older person or developmentally disabled person; and

(h) an authorized representative of a guardianship program approved by the department if the department determines that disclosure to the program or to a person designated by the program is necessary for the proper provision of guardianship services to a person alleged to be an abused, sexually abused, neglected, or exploited older person or developmentally disabled person.

(3) The records and reports required to be kept confidential by subsection (1) must be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of this part;

(b) a court ~~which~~ that has determined, in camera, that public disclosure of the report, data, information, or record is necessary for the determination of an issue before it;

(c) a grand jury upon its determination that the report, data, information, or record is necessary in the conduct of its official business.

(4) If the person who is reported to have abused, sexually abused, neglected, or exploited an older person or a developmentally disabled person is the holder of a license, permit, or certificate issued by the department of commerce under the provisions of Title 37 or issued by any other entity of state government, the report may be submitted to the entity that issued the license, permit, or certificate."

Section 59. Section 53-1-301, MCA, is amended to read:

"**53-1-301. Permitted institutional industries, powers of department, and incentive pay to inmates.** (1) Except as provided in subsection (4), the department may:

(a) establish industries in institutions that will result in the production or manufacture of products and the rendering of services as may be needed by any department or agency of the state or any political subdivision of the state, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of residents in institutions;

(b) obtain federal certification of specific prison industries programs in order to gain access to interstate markets for prison industries products;

(c) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction and for the employment of inmates in federally certified prison industries programs;

(d) print catalogs describing goods manufactured or produced by institutions and distribute the catalogs;

(e) fix the sale price for goods produced or manufactured at institutions. Prices may not exceed prices existing in the open market for goods of comparable quality.

(f) require institutions to purchase needed goods from other institutions;

(g) provide for the repair and maintenance of property and equipment of institutions by residents of institutions;

(h) provide for construction projects, up to the aggregate sum of $25,000 per project, performed by residents of institutions, except when the construction work is covered by a collective bargaining agreement;

(i) provide for the repair and maintenance at an institution of furniture and equipment of any state agency;

(j) provide for the manufacture at an institution of motor vehicle license plates and other related articles;

(k) sell manufactured or agricultural products and livestock on the open market;

(l) provide for the manufacture at an institution of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;

(m) pay an inmate or resident of an institution from receipts from the sale of products produced or manufactured or services rendered in a program in which the inmate or resident is working;

(n) collect 15% of the net wages paid to an inmate employed in a federally certified prison industries program for deposit in the Montana crime victims compensation and assistance account established under 53-9-109; and

(o) collect from an inmate employed in a federally certified prison industries program charges for room and board consistent with charges established by the director for inmates assigned to prerelease centers.

(2) (a) Except as provided for in subsection (2)(b), payment for the performance of work may be based on the following criteria:

(i) knowledge and skill;

(ii) attitude toward authority;

(iii) physical effort;

(iv) responsibility for equipment and materials; and

(v) regard for safety of others.

(b) The maximum rate of pay must be determined by the appropriation established for each program, except that ~~inmates~~ an inmate employed in a federally certified prison industries program must be paid at a rate not less than the rate paid for similar work in the locality where the inmate performs the work.

(3) Premiums for workers' compensation and occupational disease coverage must be paid by the prison industries program or by the department ~~of institutions~~. If the department pays the premium, reimbursement for premium payments for workers' compensation and occupational disease coverage must be made to the department by the private company contracting with the federally certified prison industries program for services and products.

(4) Except as provided in subsection (5), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.

(5) Any state institution, facility, or program operated by the department may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4."

Section 60. Section 53-9-109, MCA, is amended to read:

"**53-9-109. Crime victims compensation and assistance account.** (1) There is a crime victims compensation and assistance account in the state special revenue fund. There must be paid into this account 18% of the fines assessed and bails forfeited, except those paid to a justice's court, on all offenses involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 that are a result of citations or tickets issued by the highway patrol. Except as provided in ~~subsections~~ subsection (2) ~~and (3)~~, the money in the account must be used solely for the purposes of this part and for victims' assistance program coordination and planning provided by the division.

(2) The fund balance in the account as of March 31 of each year is limited to $500,000. Whenever the fund balance on March 31 exceeds $500,000, the amount of the fund balance in excess of $500,000 must be deposited in the general fund.

~~(3) On or before March 31, 1994, the division shall transfer $250,000 or the fund balance in excess of $500,000, whichever is greater, from the crime victims compensation and assistance account to the general fund.~~"

Section 61. Section 53-24-302, MCA, is amended to read:

"**53-24-302. Involuntary commitment of alcoholics.** (1) A person may be committed to the custody of the department by the district court upon the petition of ~~his~~ the person's spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition ~~shall~~ must allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that ~~he~~ the person has threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another or is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition ~~shall~~

must be accompanied by a certificate of a licensed physician who has examined the person within 2 days before submission of the petition unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal ~~shall~~ must be alleged in the petition. The certificate ~~shall~~ must set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, ~~shall~~ must be served on the petitioner, the person whose commitment is sought, ~~his~~ the person's next of kin other than the petitioner, a parent or ~~his~~ the person's legal guardian if ~~he~~ the person is a minor, the administrator in charge of the approved public treatment facility to which ~~he~~ the person has been committed for emergency care, and any other person the court believes advisable. A copy of the petition and certificate ~~shall~~ must be delivered to each person notified.

(3) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person ~~shall have~~ has a right to have a licensed physician of ~~his~~ the person's own choosing ~~examine him~~ conduct an examination and testify on ~~his~~ the person's behalf. If ~~he~~ the person has no funds with which to pay ~~such~~ the physician, the reasonable costs of one ~~such~~ examination and testimony ~~shall~~ must be paid by the county. The person ~~shall~~ must be present unless the court believes that ~~his~~ the person's presence is likely to be injurious to ~~him~~ the person. ~~He shall~~ The person must be advised of ~~his~~ the right to counsel, and if ~~he~~ the person is unable to hire ~~his own~~ counsel, the court shall appoint an attorney to represent ~~him~~ the person at the expense of the county. The court shall examine the person in open court or, if advisable, shall examine the person in chambers. If ~~he~~ the person refuses an examination by a licensed physician and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may make a temporary order committing ~~him~~ the person to the department for a period of not more than 5 days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination by the department, the court finds that grounds for involuntary commitment have been established by clear and convincing evidence, it shall make an order of commitment to the department. ~~It~~ The court may not order commitment of a person unless it determines that the department is able to provide adequate and appropriate treatment for ~~him~~ the person and that the treatment is likely to be beneficial.

(5) A person committed under this section ~~shall~~ must remain in the custody of the department for treatment for a period of 40 days unless sooner discharged. At the end of the 40-day period, ~~he shall~~ the person must automatically be discharged unless before expiration of the period the department obtains a court order from the district court of the committing district for ~~his~~ the person's recommitment upon the grounds set forth in subsection (1) for a further period of 90 days unless sooner discharged. If a person has been committed because ~~he~~ the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) who has not been discharged by the department before the end of the 90-day period ~~shall~~ must be discharged at the expiration of that period unless before expiration of the period the department obtains a court order from the district court of the committing district on the grounds set forth in subsection (1) for recommitment for a further period not to exceed 90 days. If a person has been committed because ~~he~~ the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) are permitted.

(7) Upon the filing of a petition for recommitment under subsection (5) or (6), the court shall fix a date for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, ~~shall~~ must be served on the petitioner, the person whose commitment is sought, ~~his~~ the person's next of kin other than the petitioner, the original petitioner under subsection (1) if different from the petitioner for recommitment, one of ~~his~~ the person's parents or ~~his~~ the person's legal guardian if ~~he~~ the person is a minor, and any other person the court believes advisable. At the hearing, the court shall proceed as provided in subsection (3).

(8) A person committed to the custody of the department for treatment ~~shall~~ must be discharged at any time before the end of the period for which ~~he~~ the person has been committed if either of the following conditions is met:

(a) in case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that ~~he~~ the person is no longer in need of treatment or the likelihood no longer exists; or

(b) in case of an alcoholic committed on the grounds of incapacity and the need of treatment, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(9) The court shall inform the person whose commitment or recommitment is sought of ~~his~~ the

person's right to contest the application, be represented by counsel at every stage of any proceedings relating to ~~his~~ the person's commitment and recommitment, and have counsel appointed by the court or provided by the court if ~~he~~ the person wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for ~~him~~ the person regardless of ~~his~~ the person's wishes. The person whose commitment or recommitment is sought ~~shall~~ must be informed of ~~his~~ the right to be examined by a licensed physician of ~~his~~ the person's choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) If a private treatment facility agrees with the request of a competent patient or ~~his~~ the patient's parent, sibling, adult child, or guardian to accept the patient for treatment, the department may transfer ~~him~~ the patient to the private treatment facility.

(11) A person committed under this section may at any time seek to be discharged from commitment by writ of habeas corpus or other appropriate means.

(12) The venue for proceedings under this section is the place in which the person to be committed resides or is present."

Section 62. Section 53-30-101, MCA, is amended to read:

"53-30-101. Location and function of prison and women's correctional center. (1) The institution at Deer Lodge is the state prison and as its primary function provides facilities for the custody, treatment, training, and rehabilitation of adult male criminal offenders.

(2) The institution located in ~~accordance with sections 1 through 7, Chapter 651, Laws of 1991~~ Billings is the women's correctional center and as its primary function provides facilities for the custody, treatment, training, and rehabilitation of adult female criminal offenders. ~~The department of corrections and human services may continue to operate the women's correctional center in a temporary location during the 1994-95 biennium. If the authorized institution does not require the level of services provided for in Chapter 651, Laws of 1991, an alternate site in the Billings area may be identified by department officials, city of Billings officials, and Yellowstone County officials as the site of the women's correctional facility.~~"

Section 63. Section 61-2-107, MCA, is amended to read:

"61-2-107. License reinstatement fee to fund county drinking and driving prevention programs.

(1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205 or 61-8-402 must remain suspended or revoked until the driver has paid to the department a fee of $100 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) ~~(a)~~ The department shall deposit the fees collected under subsection (1) in the general fund. One-half of the fees must be appropriated and used for funding county drinking and driving prevention programs as provided in 61-2-108. For each fiscal year, an amount up to $50,000 of the money from the fees remaining in the general fund after appropriation for those programs is statutorily appropriated, as provided in 17-7-502, to the department to purchase and maintain equipment used to analyze breath for the presence of alcohol.

~~(b) On or before June 30, 1994, the department shall transfer to the general fund the balance of the driver's license reinstatement fee state special revenue account.~~"

Section 64. Section 61-10-214, MCA, is amended to read:

"**61-10-214. Exemptions.** (1) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from ~~such~~ the limits are exempt from this part.

(2) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state ~~where~~ when those motor vehicles are used exclusively for transportation of agricultural workers are exempt from this part.

(3) Vehicles lawfully displaying a licensed dealer's or wholesaler's plate as provided in 61-4-103 are exempt from this part for a period not to exceed 7 days when moving to or from a dealer's or wholesaler's place of business when unloaded or loaded with dealer's or wholesaler's property only or while being demonstrated in the course of the dealer's or wholesaler's business~~, for a period not to exceed 7 days~~. Vehicles being demonstrated may not be leased, rented, or operated for compensation by the licensed dealer or wholesaler.

(4) Vehicles exempt from property tax under 15-6-201(1)(a), (1)(c) through (1)(e), (1)(g), (1)(o), ~~and~~ (1)(q), and (1)(v) are exempt from this part. The department of transportation may require documentation of tax-exempt status from the department of revenue before granting this exemption."

Section 65. Section 70-24-103, MCA, is amended to read:

"**70-24-103. General definitions.** Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter the following definitions apply:

(1) "Action" includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) "Case of emergency" ~~is~~ means an extraordinary occurrence beyond the tenant's control requiring immediate action to protect the premises or the tenant. A case of emergency may include the interruption of essential services, including heat, electricity, gas, running water, hot water, and sewer and septic system service, or life-threatening events in which the tenant has reasonable apprehension of immediate danger to the tenant or others.

(3) "Court" means the appropriate district court, justice's court, or city court.

(4) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by a person who maintains a household or by two or more persons who maintain a common household. ~~"Dwelling unit"~~ Dwelling unit, in the case of a person who rents space in a mobile home park but does not rent the mobile home, means the space rented and not the mobile home itself.

(5) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(6) "Landlord" means:

(a) the owner, lessor, or sublessor of:

~~(a)~~(i) the dwelling unit or the building of which it is a part; or

~~(b)~~(ii) a mobile home park; or

~~(c)~~(b) a manager of the premises who fails to disclose the managerial position.

(7) "Mobile home owner" means the owner of a manufactured mobile home dwelling unit entitled under a rental agreement to occupy a mobile home park space in a mobile home park.

(8) "Mobile home park" means a trailer court as defined in ~~50-52-102~~ 50-52-101.

(9) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(10) "Owner" means one or more persons, jointly or severally, in whom is vested all or part of:

(a) the legal title to property; or

(b) the beneficial ownership and a right to present use and enjoyment of the premises, including

a mortgagee in possession.

(11) "Person" includes an individual or organization.

(12) "Premises" means a dwelling unit and the structure of which it is a part, the facilities and appurtenances in the structure, and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

(13) "Rent" means all payments to be made to the landlord under the rental agreement.

(14) "Rental agreement" means all agreements, written or oral, and valid rules adopted under 70-24-311 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(15) "Roomer" means a person occupying a dwelling unit that does not include a toilet, a bathtub or a shower, a refrigerator, a stove, or a kitchen sink, all of which are provided by the landlord and one or more of ~~these facilities~~ which are used in common by occupants in the structure.

(16) "Single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with another dwelling unit.

(17) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others."

Section 66. Section 72-2-113, MCA, is amended to read:

"72-2-113. Share of heirs other than surviving spouse. (1) Any part of the intestate estate not passing to the decedent's surviving spouse under 72-2-112, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals designated below who survive the decedent:

~~(1)~~(a) to the decedent's descendants by representation;

~~(2)~~(b) if there is no surviving descendant, to the decedent's parents equally if both survive or to the surviving parent;

~~(3)~~(c) if there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation;

~~(4)~~(d) if there is no surviving descendant, parent, or descendant of a parent and the decedent is:

~~(a)~~(i) survived by one or more grandparents or descendants of grandparents:

~~(i)~~(A) one-half to:

~~(A)~~(I) the decedent's paternal grandparents equally if both survive;

~~(B)~~(II) the surviving paternal grandparent; or

~~(C)~~(III) the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and

~~(ii)~~(B) the other one-half to the decedent's maternal relatives in the same manner; or

~~(b)~~(ii) not survived by a grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate to the decedent's relatives on the other side in the same manner as the half.

~~(5)(a)~~(e) if there is no surviving descendant, grandparent, or descendant of a grandparent, to the person of the closest degree of kinship with the decedent. Except as provided in subsection ~~(5)(b)~~(2), if more than one person is of that closest degree, those persons share equally.

~~(b)~~(2) If more than one person is of the closest degree as provided in subsection ~~(5)(a)~~(1)(e) but they claim through different ancestors, those who claim through the nearer ancestor ~~shall~~ must receive to the exclusion of those claiming through a more remote ancestor."

Section 67. Section 72-2-116, MCA, is amended to read:

"**72-2-116. Representation.** (1) As used in this section, the following definitions apply:

(a) "Deceased descendant", "deceased parent", or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is considered to have predeceased the decedent under 72-2-114.

(b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is considered to have predeceased the decedent under 72-2-114.

(2) (a) If, under 72-2-113(1)(a), a decedent's intestate estate or a part of the intestate estate passes by representation to the decedent's descendants, the estate or part of the estate is divided into as many equal shares as there are decedent's descendants and the estate or part of the estate is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest to the decedent that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(3) (a) If, under 72-2-113~~(3)~~(1)(c) or ~~(4)~~(1)(d), a decedent's intestate estate or a part of the intestate estate passes by representation to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part of the estate is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest the deceased parents or either of them or nearest the deceased grandparents or either of them that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants."

Section 68. Section 72-33-108, MCA, is amended to read:

"**72-33-108. Definitions.** As used in chapters 33 through 36, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" means a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and, as it relates to a charitable trust, includes any person entitled to enforce the trust.

(2) "Person" means an individual, a corporation, an organization, or other legal entity.

(3) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(4) "Trust", when not qualified by the word "resulting" or "constructive", includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust and, unless otherwise provided in the trust instrument, a trust established in connection with bonds issued under Title 90, chapters ~~2 and~~ 4 through 7. The term does not include conservatorships,

personal representatives, custodial arrangements pursuant to chapter 26 of this title, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind and any arrangement under which a person is nominee or escrowee for another.

(5) "Trust company" means an entity ~~which~~ that has qualified to engage in and conduct a trust business in this state.

(6) "Trust property" means the property held in trust.

(7) "Trustee" means the person holding property in trust. The term includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

(8) "Trustor" means the person who creates a trust."

Section 69. Section 75-10-513, MCA, is amended to read:

"**75-10-513. Disposal of junk vehicles -- fees and records.** (1) When a motor vehicle wrecking facility submits a junk vehicle to the disposal program, it shall pay a disposal fee of $2 for each vehicle submitted, and the vehicle is then the property of the state.

(2) Quarterly, each motor vehicle wrecking facility shall mail to the department of justice ~~a list~~, on a form approved by the department of justice, a list of all junk vehicles received by the motor vehicle wrecking facility during the quarter, stating the year, make, and ~~the~~ complete identification number of each vehicle. ~~Any~~ If a certificate of ownership is received for a junk ~~vehicles~~ vehicle on the list, that certificate of ownership must accompany ~~each~~ the list. The department of justice shall issue a receipt ~~of [for]~~ the certificate of ownership if requested by the licensed facility, and ~~such~~ the receipt may serve as an instrument for reclaiming the certificate of ownership if the vehicle is rebuilt.

(3) A motor vehicle graveyard shall submit to the department the records, documents, and other information concerning junk vehicles received by it that are required by rules of the department."

Section 70. Section 75-10-919, MCA, is amended to read:

"**75-10-919. Supplemental material -- amendments.** (1) An application for an amendment of an application or a certificate must be in a form and contain information as the board by rule or the department by order prescribes. Notice of an amendment must be given as provided in 75-10-918(3) ~~and (4)~~.

(2) An application may be amended by an applicant any time prior to the report made by the department under 75-10-922. If the proposed amendment prevents the department from carrying out its duties and responsibilities under 75-10-901 through 75-10-945, the department may require additional filing fees as the department determines necessary or may require a new application and filing fee.

(3) The applicant shall submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide details with respect to an item described in the original application. This supplemental material may be submitted without filing an application for an amendment. The department's determination as to whether information is supplemental or whether an application for amendment is required is conclusive."

Section 71. Section 85-1-102, MCA, is amended to read:

"**85-1-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Administrative costs" means costs incurred by the department:

(a) for the purpose of protecting the department's properties and assets;

(b) to oversee the operation and maintenance of the projects;

(c) to administer contracts and receivables;

(d) to maintain project financial records;

(e) to provide technical assistance for operating, maintaining, and rehabilitating the projects; and

(f) to assist in securing funds for operating, maintaining, and rehabilitating the projects.

(2) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(3) "Cost of operation and maintenance" means the costs of operation, maintenance, and routine repairs and the costs incurred by the water users' association or the department in the distribution of water from the project, excluding the department's administrative costs.

(4) "Cost of works" means:

(a) the cost of construction, including any rehabilitation or alteration of the project;

(b) the cost of all lands, property, rights, easements, and franchises acquired ~~which~~ that are ~~deemed~~ considered necessary for the construction;

(c) the cost of all water rights acquired or exercised by the department in connection with ~~those~~ the works;

(d) the cost of all machinery and equipment, financing charges, and interest prior to and during construction and for a period not exceeding 3 years after the completion of construction;

(e) the cost of engineering and legal ~~expenses~~ services, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project;

(f) administrative expense; and

(g) other expenses ~~as may be~~ that are necessary or incident to the financing authorized in this part and the construction of the works and the placing of the works in operation.

(5) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(6) "Owner" means all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies, or associations ~~having~~ that have any title or interest in any properties, rights, easements, or franchises to be acquired.

(7) "Private person" means any individual, association, partnership, corporation, or other nongovernmental entity that is not eligible for loans and grants under 85-1-605 but does not include a governmental entity, such as an agency, local government, or political subdivision of the state, the United States, or any agency thereof, or any other governmental entity.

(8) "Project" means any one of the works defined in this section or any combination of works ~~which~~ that are physically connected or jointly managed and operated as a single unit.

(9) "Public benefits" means those benefits that accrue from a water development project or activity to persons other than the private grant or loan recipient and that enhance the common well-being of the people of Montana. Public benefits include but are not limited to recreation, flood control, erosion reduction, agricultural flood damage reduction, water quality enhancement, sediment reduction, access to recreational opportunities, and wildlife conservation.

(10) "Renewable resource grant and loan program state special revenue account" means a separate account created by 85-1-604 within the state special revenue fund of the state treasury for the purposes of the ~~water development~~ renewable resource grant and loan program as set forth in 85-1-604.

(11) "Renewable resource loan debt service fund" means a separate fund created by 85-1-604 within the debt service fund type of the state treasury to be used as provided in 85-1-619.

(12) "Renewable resource loan proceeds account" means a separate account created by 85-1-61

within the state special revenue fund of the state treasury to finance loans under the provisions of the renewable resource grant and loan program to agencies, local governments, and political subdivisions of the state, to private persons, and to any other eligible recipients and to purchase liens and operate property, as provided in 85-1-615, from proceeds of bonds issued under part 6 of this chapter.

(13) "Water development activity" means an action or program to protect and enhance water-based recreation or to protect or enhance water resources for the benefit of agriculture, flood control, or other uses, including but not limited to the promotion of efficient use of water in agriculture, the improvement of water quality in agriculture and other nonpoint source uses, the protection and enhancement of water-based recreation, the control of erosion of streambanks and control of sedimentation ~~of~~ in rivers and streams, and ~~providing~~ the provision of greater local and state control of ~~Montana~~ Montana's water resources. Water development activities may provide any combination of marketable and nonmarketable benefits.

(14) "Water development project" means a project as defined in subsection (8), except that water development projects:

(a) are not limited to projects owned or operated by the department; and

(b) for purposes of the renewable resource grant and loan program, must include water development activities.

(15) "Works" means all property and rights, easements, and franchises relating to property and considered necessary or convenient for the operation of the works and all water rights acquired or exercised by the department in connection with those works and includes all means of conserving and distributing water, including~~, without limiting the generality of the foregoing,~~ but not limited to reservoirs, dams, diversion canals, distributing canals, waste canals, drainage canals, dikes, lateral ditches and pumping units, mains, pipelines, and waterworks systems, and includes all works for the conservation, development, storage, distribution, and utilization of water, including ~~without limiting the generality of the foregoing,~~ but not limited to works for the purpose of irrigation, flood prevention, drainage, fish and wildlife, recreation, development of power, watering of stock, and supplying ~~of~~ water for public, domestic, industrial, or other uses and for fire protection."

Section 72. Section 87-1-605, MCA, is amended to read:

"**87-1-605. Fees used to purchase recreational facilities.** (1) One dollar of the fee for a Class A

resident fishing license, $1 of the fee for a Class B-4 nonresident ~~5-day~~ fishing license, and $5 of the fee for ~~the~~ a Class B nonresident fishing license ~~shall~~ must be used for the purchase, operation, development, and maintenance of fishing accesses; stream, river, and lake frontages; and the land ~~deemed~~ considered necessary to provide recreational use ~~thereof~~ of fishing accesses and stream, river, and lake frontages.

(2) The amount of funds used for operation, development, and maintenance may not exceed 25% of the ~~moneys~~ money set aside each year under this section. The funds raised under this section may not be used in lieu of any funds or sources of funds currently being used for acquisition or purchase of fishing accesses~~,~~ or stream, river, or lake frontages and the land ~~deemed~~ considered necessary to provide recreational use ~~thereof~~ of fishing accesses and stream, river, and lake frontages but ~~serve~~ are in addition to those funds. The ~~moneys~~ funds used for operation, development, and maintenance may be used only for these purposes on lands acquired with funds under this section after April 30, 1974."

NEW SECTION. **Section 73. Code commissioner instruction.** The code commissioner is instructed to implement 1-11-101(2)(g)(ii) by correcting any clearly inaccurate references to other sections of the Montana Code Annotated contained in material enacted by the 54th legislature.

NEW SECTION. **Section 74. Repealer.** Sections 1-5-205, 2-17-127, 15-25-101, 15-25-102, 15-25-111, 15-25-112, 15-25-113, 15-25-114, 15-25-115, 15-25-121, 15-25-122, 15-25-123, 19-15-101, 19-15-102, 50-49-108, and 77-1-222, MCA, are repealed.

NEW SECTION. **Section 75. Effective dates.** (1) [Section 12] is effective July 1, 1995.

(2) [Section 73] and this section are effective on passage and approval.

(3) [Sections 1 through 11, 13 through 72, and 74] are effective October 1, 1995.

-END-

- BILL NO -	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE		REREFERRED	DATE READ
HB0491	BRAINARD, MATT 2/21	3/20	CLARIFY THAT SHERIFF IS CHIEF LAW ENFORCEMENT OFFICER OF A COUNTY 3/20	3/22 CONCUR AS AMENDED	VOTE:		3/23
HB0501	ANDERSON, SHIELL 2/21	3/09	REQUIRE WRITTEN UNDERTAKING IN ACTION FOR INJUNCTION RE LAND BOARD DECISION	3/13 CONCUR	VOTE:		3/14
HB0540	MOLNAR, BRAD 3/24	3/27	GENERALLY REVISE YOUTH COURT ACT	3/27 CONCUR	VOTE:		3/28
HB0547	CLARK, ROBERT 2/21	3/06	LIFETIME GUN SUPERVISION FOR CERTAIN CRIMINALS 3/7, 3/15	3/20 CONCUR AS AMENDED	VOTE:		3/21
HB0551	CLARK, ROBERT 2/21	3/10	DNA TESTING OF SEX OFFENDERS AND VIOLENT OFFENDERS; RECORDS TO BE KEPT	3/13 CONCUR	VOTE:		3/14
HJ0014	GREEN, DICK 2/20	3/07	RESOLUTION; PREVENT LAW STUDENTS FROM SUING GOVERNMENT FOR PRISONERS	3/08 CONCUR	VOTE:		3/09
HJ0027	MCCANN, MATT 3/15	3/20	URGE ADOPTION OF ITEM VETO	3/22 CONCUR	VOTE:		3/23
SB0001	GAGE, DELWYN 1/02	1/05	CODE COMMISSIONER BILL	1/9 DO PASS	VOTE:		1/09
SB0006	CRIPPEN, BRUCE 1/02	1/10	RETAIN 7-MEMBER SUPREME COURT	1/10 DO PASS	VOTE:		1/10
SB0007	KLAMPE, TERRY 1/02	1/06	CLARIFY MEDICAL CLAIMS STATUTES OF LIMITATIONS	1/06 DO PASS	VOTE:		1/06
SB0010	GAGE, DELWYN 1/02	1/05	GIVE STATE A RIGHT TO JURY TRIAL IN ALL CRIMINAL CASES	1/09 DO PASS	VOTE:		1/09
SB0013	HALLIGAN, MIKE 1/02	1/06	REVISE MANNER TO GIVE NOTICE TO DRIVER WHEN LICENSE OR PRIVILEGES SUSPENDED 1/10	2/02 PASS AS AMENDED	VOTE:	JUDICIARY	1/06

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE CRIPPEN** on January 5, 1995, at 10:00 a.m.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary
Judy Feland, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 1, SB 10
Executive Action: SB 26

HEARING ON SB 1

[Tape 1, Side A]

Opening Statement by Sponsor:

SENATOR DELWYN GAGE, SD 43, Cut Bank, presented SB 1, which is "an act generally revising and clarifying the Montana Code Annotated: Directing the Code Commissioner to clarify erroneous references contained in material enacted by the 54th

Legislature." **SENATOR GAGE** explained that this code commissioner bill comes before the legislature each session and modifies parts of the law that have been preempted by court decisions and/or corrects errors that are not substantive in nature.

Proponents' Testimony:

Greg Petesch, Code Commissioner for the State of Montana, told the committee that the statute requires him to prepare a report and legislation to correct errors in the code. The procedure used to prepare this bill has been designed over time to prevent controversy. All proposed amendments have been sent in advance to the parties affected by the provisions.

Mr. Petesch highlighted the following provisions that appear to be substantive and explained why they were not:

*Local option gas tax in Section 8. Previously exempted from the transfer in collection of all fuel taxes from the Department of Revenue to the Department of Transportation, this clarifies that all fuel taxes are now collected by the Department of Revenue.

*Allocation of taxes in Section 10. In the section of the law that deals with oil severance tax collections, the law will be amended to read all amounts of collections rather than the remainder; there is no excess to be allocated.

*School special education law in Section 34. This deals with the removal of an emotionally disturbed child. The Department of Family Services pointed out that definition is never used in DFS law and should be removed. There is no provision in DFS laws that use that term. The Office of Public Instruction uses the same definition, but one that already exists and conforms to federal requirements and they preferred not to have this additional definition in the codes.

*Probate in Section 41. This is actually a presumption under the evidentiary provisions. During the last session the law was revised to read that a person was presumed dead after five years of not being heard from. The evidentiary presumptions contain a provision of seven years. These conformed before. It does not make sense to declare a person dead for one purpose but not another. This change conforms the presumption of death to a five year period for both probate and other evidentiary matters.

*Duties of Code Commissioner in Section 73. This section has been included in the last five sessions. This implements an existing section of the statute governing the duties of the code commissioner, that says when given the authority by another law, the code commissioner may correct erroneous references in law. If there is any doubt, the references are bracketed and brought back to the legislature the next time, he said. All changes are reported in the code commissioner report which is published in the annotations in the end.

Mr. Petesch said there was a section regarding notary publics to repeal because of the adoption of the uniform material acts bill last session. The other form is now archaic.

Mr. Petesch also said that there were several provisions referring to the governor's centennial mansion enacted as part of the centennial process, but the time is long past for the state to exercise its options so these statutes would repealed.

Mr. Petesch explained the repealing of the dangerous drug tax. This was declared unconstitutional by the Supreme Court on the basis of double jeopardy. This would normally not be done in a code commission bill and the committee would be allowed to amend it as they chose, because he said he knows of no way to undo a statute that's been acknowledged as a double jeopardy in a criminal provision even though it was civil in nature. It would be better to get it off the books and if anyone wanted to pursue a dangerous drug tax; to start anew. There is currently a bill request in to revise the dangerous drug tax and the sponsor thought it would be better to start with a new set of statutes rather than trying to undo the double jeopardy provision attached to this civil statute.

Another set of statutes the bill would repeal dealt with the retirement adjustment for state retirees. It was struck down when the legislature dealt with the ramifications of the tax treatment of federal retirees. They're being repealed rather than revised because the court said that they were invalid because the bill contained two subjects in violation of the single subject provision. **Mr. Petesch** said he knew of no way to remedy a bill to remove a subject after it's been passed.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR AL BISHOP inquired why did he change the non-probate to five instead of changing the probate to seven.

Mr. Petesch answered that the probate section was changed last session. This was an oversight.

SENATOR LORENTS GROSFIELD asked **Mr. Petesch** about the two-subject provision and inquired if it was normal for the supreme court to nullify both provisions.

Mr. Petesch said that this particular discussion had taken up much of the opinion in the case and there was a separability clause included in that bill because the legislature was aware of that potentially. The Supreme Court implemented the separability clause to strike the retirement adjustment because the tax

treatment was mandated for conformity with federal law. The court determined that this was the true purpose of the bill, and the retirement adjustment was an attempt to undo that tax treatment that was required in the first half of the bill for state retirees.

SENATOR MIKE HALLIGAN asked about the definition of an emotionally disturbed child, as used in special education status. He asked if it was nowhere else in the statute?

Mr. Petesch said that the definition is being retained in the special education statutes, but is being removed from the program under the Department of Family Services term where it is never used.

DISCUSSION:

CHAIRMAN CRIPPEN said he would be willing to appoint a sub-committee to go over these provisions with **Mr. Petesch** if any of the committee members wanted to satisfy themselves and the rest of the committee that the changes are appropriate and not taking away substantive rights.

Closing by Sponsor:

SENATOR GAGE, in closing on SB 10, remarked on the dangerous drug tax issue and wondered how the Internal Revenue Service could penalize or jail a person for fraud, when one is a civil case and the other is criminal. The courts don't have any problem with jailing for a criminal case, he said, but they do with this. He asked for a favorable consideration on the bill.

HEARING ON SB 10

Opening Statement by Sponsor:

SENATOR DELWYN GAGE, SD 43, Cut Bank, presented SB 10, an act entitled: An act granting the state the right to a jury trial in all felony and misdemeanor cases in all courts." **SENATOR GAGE** said the bill attempts to level the playing field with regard to court activity in jury trials.

Proponents' Testimony:

John Connor, representing the Montana County Attorneys' Association, spoke in support of the bill. This bill is a request from that association in response to a problem that arose from the decision of the Montana Supreme Court in 1993 called Nelson vs. Supreme Court. Then-County Attorney Nelson had prosecuted a felonious assault and obstruction of justice case in

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 1-5-95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

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MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on January 9, 1995, at 10:00 a.m.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 29
Executive Action: SB 1, SB 10, SB 29

HEARING ON SB 29

{Tape: 1; Side: A }

Opening Statement by Sponsor:

SENATOR SUE BARTLETT, Senate District No. 29, said SB 29 is a technical bill which addresses problem areas in our child support enforcement laws. Sections 1 through 6 and Section 10 all relate generally to the same topic and are simply changes in different

Informational Testimony:

None.

Questions From Committee Members and Responses:

SENATOR SHARON ESTRADA asked how many obligors who have fled the state are included in the $120 million of arrearages. There are approximately 42,000 individuals, of course, not all are delinquent. They will have a new computer program in operation in a couple of weeks and she would be able to give a number at that time. **SENATOR ESTRADA** further asked about the difficulty of collecting from obligors who now live in another state. **Ms. Wellbank** stated that each state has jurisdiction over the people in their state and many different rules apply making it difficult to collect past due amounts.

SENATOR LORENTS GROSFIELD asked for clarification between the terms "child care" and "child support". **Ms. Wellbank** stated different terms are use by different judges. The Division's authority allows them to collect for "child support". If an order is not worded correctly, they cannot collect the money. **Ms. Wellbank** stated that the obligor still owes for both child care and child support, however, their department cannot collect for child care.

SENATOR STEVE DOHERTY asked whether Montana is at the mercy of other states in order to get past due money. **Ms. Wellbank** stated there is a federal law entitled Federal Child Support Recovery Act where a U. S. attorney will prosecute the most egregious cases. **SENATOR DOHERTY** asked how often a mother owed less than $100,000 to $200,000 will get anything. **Ms. Wellbank** stated that would not happen very often. **SENATOR DOHERTY** further asked whether the Division has considered turning some of these bills over to bill collectors. **Ms. Wellbank** stated that within the coming biennium they would start turning over severely past due cases. They can only turn over AFDC arrearages. Non-AFDC arrearages are monies owed the obligee and the state has no interest in these funds.

SENATOR BRUCE CRIPPEN stated that he had received written testimony from **Peter S. Blouke, Director of SRS**, and it would be included with the minutes as **EXHIBIT 3**.

Closing by Sponsor:

SENATOR BARTLETT did not offer any more remarks in closing.

EXECUTIVE ACTION ON SB 1

Motion/Vote: **SENATOR MIKE HALLIGAN** moved **SB 1 DO PASS**. The motion **CARRIED UNANIMOUSLY** on oral vote.

SENATE STANDING COMMITTEE REPORT

January 9, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB1 (first reading copy -- white), respectfully report that SB1 do pass.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

071118SC.Srf

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0551	CLARK, ROBERT 2/14	2/15	DNA TESTING OF SEX OFFENDERS AND VIOLENT OFFENDERS; RECORDS TO BE KEPT DO PASS 2/16 VOTE: 17-1		2/17
HB0566	JORE, RICK 2/16	2/17	REVISE PRINCIPLES OF RIGHTS OF CONVICTION TABLED ON 02/17 VOTE: 17-0		
HB0597	WELLS, JACK 3/15	3/21	PRIVATE PROPERTY PROTECTION ACT TABLED ON 03/21 VOTE: 13-6		
HJ0014	GREEN, DICK 1/20	2/01	RESOLUTION; PREVENT LAW STUDENTS FROM SUING GOVERNMENT FOR PRISONERS DO PASS 2/6 VOTE: 9-7		2/08
HJ0018	BRAINARD, MATT 2/04		ENCOURAGE GUN OWNERSHIP TO PROTECT STATE AND ITS PEOPLE VOTE:	STATE ADMIN.	
SB0001	GAGE, DELWYN 1/12	1/20	CODE COMMISSIONER BILL CONCUR 1/20 VOTE: 17-0		1/23
SB0006	CRIPPEN, BRUCE	1/09	RETAIN 7-MEMBER SUPREME COURT VOTE:		
SB0006	CRIPPEN, BRUCE 1/14	1/19	RETAIN 7-MEMBER SUPREME COURT CONCUR 1/19 VOTE: 19-0		1/20
SB0007	KLAMPE, TERRY 1/10	1/17	CLARIFY MEDICAL CLAIMS STATUTES OF LIMITATIONS CONCUR 1/17 VOTE: 19-0		1/18
SB0010	GAGE, DELWYN 1/12	1/20	GIVE STATE A RIGHT TO JURY TRIAL IN ALL CRIMINAL CASES CONCUR 1/20 VOTE: 17-0		1/23
SB0013	HALLIGAN, MIKE 2/15	3/01	REVISE MANNER TO GIVE NOTICE TO DRIVER WHEN LICENSE OR PRIVILEGES SUSPENDED CONCUR AS AMENDED 3/22 VOTE: 17-0		3/23
SB0026	FRANKLIN, EVE		ALLOW LARGER DETENTION FACILITY GRANTS IN CASES OF EXTREME HARDSHIP		

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on January 20, 1995, at 8:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: Rep. Chris Ahner
Vice Chair Diana Wyatt

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 1, SB 10, HB 160, HB 161
Executive Action:	SB 1 BE CONCURRED IN
	SB 10 BE CONCURRED IN
	SB 26 BE CONCURRED IN

{Tape: 1; Side: A}

HEARING ON SB 1

Opening Statement by Sponsor:

SEN. DELWYN GAGE, SD 43, described SB 1 as the code commissioner bill which deals with items in the code which have either been declared unconstitutional or for some reason void by Supreme Court contradictions in terms or information. These items have been reviewed thoroughly by the agencies of government that they may affect before they are put into the bill.

Proponents' Testimony:

Greg Petesch, Code Commissioner, Legislative Council, described how the bill was prepared to remove any controversy from the bill. He then highlighted the provisions of the bill and explained the reasons for them to dispel any questions as to their appropriate inclusion in the bill.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. BRAD MOLNAR asked about HB 632 from the last legislative session which related to youth for out-of-state placement which through codification was combined with another bill. Therefore, the lines of supervision and rule making authority between the Department of Corrections and Human Services and the Department of Family Services had become unclear. He wanted to know if that was being addressed in SB 1.

Mr. Petesch said it was not. The bills themselves directed the placement of those statutes and in order to change that, which is a substantive change, those agencies should provide the impetus for that change.

REP. MOLNAR asked what that impetus would be.

Mr. Petesch said that it takes legislation to do it.

REP. DEB KOTTEL asked if the dangerous drug tax repealer went all the way to the U. S. Supreme Court.

Mr. Petesch said that the Montana Supreme Court upheld it and the U. S. Supreme Court declared it unconstitutional.

Closing by Sponsor:

SEN. GAGE said **REP. MENAHAN** would carry the bill.

Mr. Crichton said that if the advisory committee thought it was within their ability to respond with written language, he would share it with the committee.

REP. LOREN SOFT believed there were statutes on the books which compel adults to report any child abuse. He assumed that would apply to the photo developer.

Mr. Connor responded that under title 41 there is a statute which delineates who is obligated by law to report suspected abuse. He did not believe that there is a general reporting obligation while there are specifics.

Closing by Sponsor:

REP. CURTISS directed the committee to page 2, lines 9 and 10, where the language addresses the concern about the sex education programs. She recalled hearing much about poor law enforcement regarding obscenity and pornography and submitted that much of that could be cured relative to child pornography if this change were adopted. Only by providing strong deterrents are those persons in our society who have no qualms about preying on the innocent for financial gain going to be stopped.

{Tape: 1; Side: B}

CHAIRMAN CLARK relinquished the chair to **VICE CHAIR SHIELL ANDERSON.**

EXECUTIVE ACTION ON SB 26

Motion: **REP. MOLNAR MOVED SB 26 BE CONCURRED IN.**

Discussion: **REP. MOLNAR** said he believed this was a reasonable solution and could not see any problem with this legislation.

Vote: Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 1

Motion: **REP. BILL CAREY MOVED SB 1 BE CONCURRED IN.**

Discussion: **REP. DUANE GRIMES** pointed out to the committee that past review of this bill which is proposed every session has caused the committee to get bogged down. He especially remembered the committee's past involvement with the issues in section 15 of the bill.

REP. CURTISS asked if this section could be segregated out by a motion for the committee to address.

VICE CHAIR ANDERSON said a motion would be in order but he did not believe **REP. GRIMES** thought it was defendable to leave that section in.

REP. GRIMES said that was correct, and that the committee would have to write a whole new law which could be done, but there was not time to do it now but it could be done in a future session.

REP. CURTISS asked if there would be any harm done if this section were left in the statutes until the next session of the legislature.

Mr. MacMaster answered there he didn't think there would be, but he agreed with **Mr. Petesch** that the U. S. Supreme Court saw the law as unconstitutional on the federal double jeopardy principles. If that is the case, there is little or nothing in the law that could be saved since it could not be enforced. It would leave a law on the books in title 15 that is unenforceable. He added that there is a bill in the Senate which is looking at rewriting the drug tax law.

REP. GRIMES didn't think it would further the integrity of the committee to throw this into a conference committee or to go on the floor with anything different in this bill.

REP. MOLNAR believed that they should be able to go to the code books and know that what is being read and quoted is accurate and constitutional and to that end, he felt that the committee needed to leave the bill as is.

Vote: The motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 10

Motion: **REP. DANIEL MC GEE MOVED SB 10 BE CONCURRED IN.**

Discussion: **REP. LINDA MC CULLOCH** asked if this would have the effect of passing down an unfunded mandate to the counties.

REP. MC GEE said this would not change who pays for a jury, but it just changes who can argue whether or not there is going to be a jury.

REP. MC CULLOCH replied that with this bill the state could request a jury and therefore there might be a cost incurred.

REP. MC GEE said that actually the state did have a say in the Constitution, but what happened was this particular legislation usurped the state's Constitutional right.

Vote: Motion carried unanimously by voice vote.

CHAIRMAN CLARK reassumed the chair.

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 1/26/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority		✓	
Rep. Chris Ahner		✓	
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓ late		
Rep. Debbie Shea	✓ late		
Rep. Liz Smith	✓ late		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

HOUSE STANDING COMMITTEE REPORT

January 20, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 1** (third reading copy -- blue) **be concurred in**.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Menahan

PS.

Committee Vote:
Yes 15, No 0.

171514SC.Hdh

GD

SENATE BILL NO. 1

INTRODUCED BY GAGE, MENAHAN

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CLARIFY ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 54TH LEGISLATURE; AMENDING SECTIONS 1-2-201, 1-11-302, 2-2-102, 3-5-403, 3-10-601, 7-8-2218, 7-14-102, 7-14-301, 13-37-226, 15-1-501, 15-31-702, 15-35-108, 15-36-112, 15-37-117, 15-51-103, 15-53-114, 15-59-108, 15-59-208, 15-60-210, 15-65-121, 15-70-101, 15-71-104, 16-1-306, 16-1-401, 16-1-404, 16-1-408, 16-1-410, 16-1-411, 16-11-119, 16-11-206, 17-1-503, 17-6-201, 17-7-502, 20-7-436, 20-9-104, 20-9-115, 20-9-314, 20-9-370, 20-9-466, 23-5-610, 26-1-602, 32-3-704, 32-3-801, 37-17-102, 39-51-304, 39-71-532, 39-71-2504, 40-4-215, 41-5-311, 45-2-101, 45-5-206, 46-11-111, 46-18-248, 46-18-250, 46-18-304, 52-2-101, 52-2-505, 52-3-813, 53-1-301, 53-9-109, 53-24-302, 53-30-101, 61-2-107, 61-10-214, 70-24-103, 72-2-113, 72-2-116, 72-33-108, 75-10-513, 75-10-919, 85-1-102, AND 87-1-605, MCA; REPEALING SECTIONS 1-5-205, 2-17-127, 15-25-101, 15-25-102, 15-25-111, 15-25-112, 15-25-113, 15-25-114, 15-25-115, 15-25-121, 15-25-122, 15-25-123, 19-15-101, 19-15-102, 50-49-108, AND 77-1-222, MCA; AND PROVIDING EFFECTIVE DATES."

THERE ARE NO CHANGES ON THIS BILL AND WILL NOT BE REPRINTED. PLEASE REFER TO INTRODUCED (WHITE) BILL FOR COMPLETE TEXT.